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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of
THE W. N. CONNELL AND MARJORIE T. CONNELL
LIVING TRUST,
Dated May 18, 1972

Case No. P-09-066425-T

Dept. No. XXVI (26)

Date of Hearing: February 18, 2014

Time of Hearing: 9:30 a.m.

An Inter Vivos Irrevocable Trust.

PRE-TRIAL MEMORANDUM

I. STATEMENT OF FACTS

Background

ELEANOR C. AHERN, also known as ELEANOR CONNELL HARTMAN AHERN ("ELEANOR"), was born on May 13, 1938 to W.N. CONNELL and her mother, whom W.N. CONNELL later divorced. Following W.N. CONNELL's divorce (an event that at the time was unusual and carried a negative stigma) from ELEANOR's biological mother, he married MARJORIE T. CONNELL in approximately 1942. At the time of the marriage, W.N. CONNELL had only one child, namely ELEANOR, who was approximately four (4) years of age. During her minority, physical custody of ELEANOR was shared between her father, W. N. CONNELL, and ELEANOR's natural mother, who married Joe Gallowich when ELEANOR was approximately six (6) years of age. Such custody arrangement involved ELEANOR living part of each week with W. N. CONNELL and her stepmother, MARJORIE T. CONNELL, and living part of each week with

1 ELEANOR's natural mother (and stepfather after the remarriage of ELEANOR's natural mother).
2 ELEANOR developed a very close relationship with MARJORIE T. CONNELL, and in fact
3 MARJORIE T. CONNELL eventually adopted ELEANOR after ELEANOR reached majority age.
4 ELEANOR has always considered MARJORIE T. CONNELL her mother and in fact referred to her
5 as "mother," and ELEANOR had a great amount of love, affection and parental deference to
6 MARJORIE T. CONNELL.

7 At the time of their marriage, W. N. CONNELL and MARJORIE T. CONNELL were
8 residents of the state of Nevada, a community property state, and W. N. CONNELL had sole and
9 separate property consisting in part of surface real estate located in Upton County, Texas, and the
10 oil, gas and mineral interests on and under such real estate and severed oil, gas and mineral interests
11 in other acreage in Upton County, Texas (the "Upton County, Texas, Oil rights"). Texas was at the
12 time of the marriage, and is a community property state also.

13 W. N. CONNELL and MARJORIE T. CONNELL as Nevada residents and as grantors and
14 initial trustees established the W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST
15 dated May 18, 1972 (the "TRUST"). The TRUST is governed by Nevada law as set forth in Article
16 EIGHTH, *SPECIAL PROVISIONS*, Paragraph F, *Applicable Law*, of the TRUST which states in
17 relevant part, "[t]his Trust Agreement is executed under the laws of the State of Nevada and shall in
18 all respects be governed by the laws of the State of Nevada...." The sole and separate Upton
19 County, Texas, Oil rights of W. N. CONNELL were conveyed by W. N. CONNELL to himself and
20 MARJORIE T. CONNELL as Trustee (sic) of the TRUST via two Quitclaim Deeds dated June 5,
21 1972 and recorded June 13, 1972 as Instrument No. 61969 in Volume 409, Page 329 and as
22 Instrument No. 61970 in Volume 414, Page 9 of the Deed Records of the County Clerk of Upton
23 County, Texas. This was legally necessary in order to have the Upton County, Texas, Oil rights an
24 asset of the TRUST. Otherwise, the Upton County, Texas, Oil rights, would have remained an asset
25 of W. N. CONNELL individually, and would have been controlled by the terms of his Last Will
26 And Testament upon his demise as opposed to being controlled by the terms of the TRUST.

27 W. N. CONNELL died on November 24, 1979 and was survived by his spouse, MARJORIE
28 T. CONNELL. ELEANOR was and is the only surviving child of W. N. CONNELL. Following

1 W.N. CONNELL's death, MARJORIE T. CONNELL, the sole successor trustee of the TRUST
2 appointed ELEANOR on May 6, 1980 to serve as co-trustee of the TRUST with MARJORIE T.
3 CONNELL.

4 When W.N. CONNELL passed away, MARJORIE T. CONNELL, as sole successor trustee,
5 began paying herself sixty-five percent (65%) of the Upton County, Texas, Oil right income and
6 ELEANOR thirty-five percent (35%) of the Upton County, Texas, Oil right income. ELEANOR
7 consulted an attorney and was advised that although ELEANOR was entitled to all of the Upton
8 County, Texas, Oil right income, if she asserted her rights to all of the income against MARJORIE
9 T. CONNELL at that time it would in all likelihood result in MARJORIE T. CONNELL
10 disinheriting ELEANOR when MARJORIE T. CONNELL died. This advice essentially was to
11 take less now so you could inherit all of MARJORIE T. CONNELL's estate later. Although
12 ELEANOR knew that she (ELEANOR) was entitled to one hundred percent (100%) of the Upton
13 County, Texas, Oil right income, she consented to MARJORIE T. CONNELL receiving the sixty-
14 five percent (65%). The advice of the attorney and ELEANOR's deferential upbringing, combined
15 with her love and respect for, and deference to, MARJORIE T. CONNELL as her mother, lead to
16 her acquiescence. ELEANOR also at the time was financially secure and did not need the money.
17 Instead, ELEANOR found great joy and pride in the fact that her mother, MARJORIE T.
18 CONNELL, was well taken care of after the death of ELEANOR's father due in large part to
19 ELEANOR. At no point, however, did ELEANOR intend to forfeit any portion of her rights in the
20 Upton County, Texas, Oil rights and the income therefrom, nor was that the understanding of either
21 ELEANOR or MARJORIE T. CONNELL.

22 This allowance was in the sole and absolute discretion of ELEANOR, and was subject to
23 unilateral change or revocation in the future on ELEANOR's part. However, the arrangement was
24 that since MARJORIE T. CONNELL was in fact receiving sixty-five (65%) percent of the income,
25 MARJORIE T. CONNELL would pay the income tax attributable to the income she received or her
26 share would be charged the same, which was done. ELEANOR accordingly did not file any gift tax
27 returns since if the monies had been considered a gift, MARJORIE T. CONNELL would not have
28 been reporting the same on her income tax return and paying the tax thereon. The TRUST tax

1 returns also reflect this arrangement. This made estate planning sense in that the federal estate tax
2 equivalent exemption and gift tax exclusion amount in 1979, the year of death of W.N. CONNELL,
3 was only \$147,333.00, and ELEANOR's exemption would have been exhausted in very little time if
4 treated as gifts.

5 Around the year 1999, ELEANOR moved to Idaho and it was after so moving that Petitioner
6 JACQUELINE M. MONTOYA took an increased role in dealing with the Upton County, Texas,
7 Oil rights. This role included retrieving and depositing income checks relating to the Upton
8 County, Texas, Oil rights and accounting for the payments received.

9 MARJORIE T. CONNELL died on May 1, 2009 a resident of Clark County, Nevada. She
10 had no surviving spouse, but was survived by her only child, ELEANOR. Following MARJORIE
11 T. CONNELL's death, ELEANOR became the sole trustee of the TRUST.

12 Almost immediately after MARJORIE T. CONNELL's death, JACQUELINE M.
13 MONTOYA removed numerous TRUST documents and records, including documents relating to
14 the Upton County, Texas, Oil rights, from MARJORIE T. CONNELL's home and refused to allow
15 ELEANOR access to the same. Also, attendant to the control that JACQUELINE M. MONTOYA
16 had gained while ELEANOR lived in Idaho, JACQUELINE M. MONTOYA possessed the key to
17 the post office box located in Las Vegas, Nevada, to which the Upton County, Texas, Oil right
18 income payments were sent. JACQUELINE M. MONTOYA refused to turn over the key or allow
19 ELEANOR access to this post office box. Accordingly, JACQUELINE M. MONTOYA had full
20 control over the payments received from the Upton County, Texas Oil rights.

21 Exerting her control, JACQUELINE M. MONTOYA took it upon herself to continue
22 dividing the Upton County, Texas, Oil right income in the same proportion as it had been divided
23 while MARJORIE T. CONNELL was alive. Now, however, JACQUELINE M. MONTOYA
24 decided that she would pay the sixty-five percent (65%) that was formerly paid to MARJORIE T.
25 CONNELL to herself and her sister, KATHRYN A. BOUVIER. As a result of various health
26 problems endured by ELEANOR, she was not able to take back control of the Upton County,
27 Texas, Oil right income until the spring of 2012. Specifically, between February and April of 2011,
28 ELEANOR suffered from a hernia, which caused her to be hospitalized for a period of time.

1 Additionally, in the early part of 2012, ELEANOR broke her leg and had a severe allergic reaction
2 as a result of medication given to her for her leg injury. This leg injury and the ensuing allergic
3 reaction caused ELEANOR to spend an extended amount of time in the hospital and in
4 rehabilitation. When ELEANOR was able to take back control of the Upton County, Texas, Oil
5 right income, she did so by presenting to the post office the TRUST agreement showing that
6 ELEANOR was the sole successor trustee of the TRUST.

7 Based on the lack of cooperation on the part of JACQUELINE M. MONTOYA noted above
8 and other improprieties discussed below, ELEANOR desired, in the spring of 2012, to discontinue
9 payments from the TRUST to JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER.
10 Thus, ELEANOR began seeking out legal advice as to her legal options. After consulting with
11 several attorneys regarding her right to do so, ELEANOR decided in June of 2013 to discontinue
12 the payment of sixty-five percent (65%) of the Upton County, Texas, Oil right income to
13 JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER. It should also be noted that prior
14 to June 2013, the parties attempted mediation, though unsuccessfully.

15 As noted above, even before taking back control over the payments relating to the Upton
16 County, Texas, Oil rights, ELEANOR noticed improprieties by JACQUELINE M. MONTOYA,
17 which lead in part to ELEANOR's decision to discontinue payments to JACQUELINE M.
18 MONTOYA and KATHRYN A. BOUVIER.

19 Beginning in or around 2011, ELEANOR was notified by a branch manager at Wells Fargo
20 Bank that ELEANOR's personal bank accounts had been closed and reopened, and the branch
21 manager requested that ELEANOR go to the bank to re-sign her signature cards. After having done
22 so and upon reviewing the signature cards when ELEANOR arrived home, she discovered that
23 Petitioner JACQUELINE M. MONTOYA was a signer on all of her accounts. The next day after
24 noticing this, ELEANOR went back to the bank and demanded that JACQUELINE M. MONTOYA
25 be removed as a signer on ELEANOR's personal accounts. After JACQUELINE M. MONTOYA
26 had been removed, ELEANOR re-signed her signature cards.

27 Then in approximately spring of 2012 (when ELEANOR began receiving the Upton County,
28 Texas Oil right income checks), ELEANOR discovered that the bank account for the TRUST had

1 been closed by Petitioner JACQUELINE M. MONTOYA. This account was established by
2 MARJORIE T. CONNELL and ELEANOR to receive the royalty payments from the Upton
3 County, Texas, Oil rights. In its place, ELEANOR discovered that Petitioner JACQUELINE M.
4 MONTOYA had opened an account on which JACQUELINE M. MONTOYA was listed as the
5 Customer and to which the Upton County, Texas, Oil right income was deposited. ELEANOR
6 never consented to the closing of the TRUST bank account or opening of this new account. Upon
7 looking into this matter further and hiring a handwriting expert, ELEANOR discovered that
8 Petitioner JACQUELINE M. MONTOYA forged or caused to be forged ELEANOR's signature
9 and the signature of MARJORIE T. CONNELL on this signature card for this account.

10 Further, in September of 2012, Petitioner JACQUELINE M. MONTOYA completed a
11 Consumer Account Application at Wells Fargo Bank to open two (2) new accounts under the name
12 of the ECA LIVING TRUST. Included with this Consumer Account Application is a Certification
13 Of Trustee wherein Petitioner JACQUELINE M. MONTOYA lists herself as the sole trustee and
14 the person who has the power to revoke said trust. However, the ECA LIVING TRUST is
15 ELEANOR's trust and Petitioner JACQUELINE M. MONTOYA is not a trustee of this trust.

16 Also during this time, ELEANOR was inadvertently given one of Petitioner JACQUELINE
17 M. MONTOYA's bank statements, which revealed that Petitioner JACQUELINE M. MONTOYA
18 had spent approximately Eighty Thousand Dollars (\$80,000) in one month. ELEANOR was
19 shocked, and realized that perhaps her allowing her daughters income from the Upton County,
20 Texas Oil rights was doing more harm than good. ELEANOR also realized that by taking all of the
21 income that she was rightfully entitled to, she could control the use of the same for the ultimate
22 benefit of her daughters and grandchildren during ELEANOR's lifetime and any accumulated
23 income upon her death.

24 As a result of these events, ELEANOR found it imperative that she protect her interest in the
25 Upton County, Texas, Oil rights. Therefore, ELEANOR decided to take back control over the
26 Upton County, Texas, Oil rights, which had been left to her by her late father, as his only child.

27 ***JACQUELINE M. MONTOYA's Argument***

28 Upset with ELEANOR's decision to reclaim one hundred percent (100%) of the Upton

1 County, Texas, Oil right income, JACQUELINE M. MONTOYA has instituted this action to regain
2 access to sixty-five percent (65%) of the Upton County, Texas, Oil right income. In doing so,
3 JACQUELINE M. MONTOYA filed her Petition For Declaratory Judgment Regarding Limited
4 Interest Of Trust Assets Pursuant To NRS 30.040, NRS 153.031(1)(E), And NRS 164.033(1)(A)
5 herein on September 27, 2013 (the "DECLARATORY JUDGMENT PETITION"). JACQUELINE
6 M. MONOTYA's argument in support of her position is this: there was an implied allocation of
7 sixty-five percent (65%) of the Upton County, Texas, Oil rights via a 1980 Texas Inheritance Tax
8 Return to Trust No. 3 of the TRUST. Further, JACQUELINE M. MONOTYA argues that
9 MARJORIE T. CONNELL exercised her testamentary power of appointment regarding Trust No. 3
10 of the TRUST in her Last Will and Testament. In doing so, MARJORIE T. CONNELL appointed
11 sixty-five percent (65%) of the Upton County, Texas, Oil rights purportedly owned by Trust No. 3
12 of the TRUST to THE MTC LIVING TRUST dated December 6, 1995 as restated on January 7,
13 2008 ("THE MTC LIVING TRUST"), of which JACQUELINE M. MONTOYA is the current
14 trustee and equal beneficiary with her sister, KATHRYN A. BOUVIER.

15 ***Language of the TRUST***

16 The TRUST agreement provides in part that upon the death of the Grantor whose death shall
17 first occur [W. N. CONNELL], the Trustee shall divide the trust estate into two parts, each part to
18 be administered as a separate trust to be known respectively as "Trust No. 2" and "Trust No. 3". In
19 particular, Article SECOND, *TRUST NO. 1*, Paragraph C, *Death of Either Grantor*, of the TRUST
20 agreement in relevant part states:

21 "Upon the death of the Grantor whose death shall first occur, the Trustee shall divide the
22 trust estates, including all property received as a result of the decedent's death, as follows:

23 **1. The trust estate and all property received as a result of the decedent's death**
24 **shall be divided into two parts, each part to be administered as a separate trust**
25 **to be known respectively as 'Trust No. 2' and 'Trust No. 3'."**

26 Subparagraphs 2 and 3 of said Paragraph C of the TRUST agreement describe how Trust
27 No. 3 is to be funded, and state as follows:

28 "2. The Trustee shall allocate to Trust No. 3 (a) the Survivor's [MARJORIE T. CONNELL]
separate property interest in the trust estate; (b) the Survivor's [MARJORIE T. CONNELL]

1 one-half (½) interest in the community property of the trust estate, less a proportionate part
2 of all amounts properly chargeable against all community property; and (c) the Survivor's
3 [MARJORIE T. CONNELL] community property interest in any policy of insurance on the
4 life of the Decedent [W. N. CONNELL] owned by the Grantors as community property and
5 made payable to Trust No. 1."

6 "3. The Trustee shall allocate to Trust No. 3 from the Decedent's [W. N. CONNELL]
7 separate property an amount as determined in Article THIRD hereof."

8 Article *THIRD, MARITAL DEDUCTION*, of the TRUST agreement states in relevant part:

9 "The Trustee shall allocate to Trust No. 3 from the Decedent's [W. N. CONNELL] separate
10 property the fractional share of the said assets which is equal to the maximum marital
11 deduction allowed for federal estate tax purposes, reduced by the total of any other amounts
12 allowed under the Internal Revenue Code as a Marital Deduction which are not a part of this
13 trust estate."

14 Subparagraph 4 of said Paragraph C of the TRUST agreement describes how Trust No. 2 is
15 to be funded, and states as follows:

16 **"The Trustee shall allocate to Trust No. 2 all the remaining protion (sic) of the trust**
17 **estate not allocated to Trust No. 3,** including but not limited to, the Decedent's [W. N.
18 CONNELL] community property interest, if any, in any life insurance policy on the life of
19 the Decedent [W. N. CONNELL] payable to Trust No. 1." (emphasis added)

20 The Upton County, Texas Oil rights were never allocated to Trust No. 3 via a deed or even
21 written assignment, and accordingly became a part of Trust No. 2 as part of "... all the remaining
22 protion (sic) of the trust estate not allocated to Trust No. 3."

23 Article *FOURTH, TRUST NO. 2, Paragraph B, Income*, of the TRUST agreement sets forth
24 how the income of Trust No. 2 was to be paid, and in relevant part states:

25 **"All income received by this Trust from the separate property of the Decedent [W. N.**
26 **CONNELL] shall be paid to the Residual Beneficiary [ELEANOR]. In the event any**
27 **of the real property located in Upton County, Texas, as listed on the original Schedule**
28 **"A" attached hereto, forms a part of the corpus of this Trust, the Residual Beneficiary**
[ELEANOR] shall be paid an additional payment from the income received from the
Decedent's [W. N. CONNELL] half of the community property, which forms a part of
the corpus of this Trust, equal to all of the income received by this Trust from the real
property located in Upton County, Texas." (emphasis added)

1 Schedule "A" attached to the TRUST agreement sets out the detailed legal descriptions of
2 the Upton County, Texas, real property as the "... separate property of W. N. CONNELL."
3 Accordingly, all income from the Upton County, Texas, Oil rights is to be paid to ELEANOR. It is
4 obvious that the intent of Decedent W. N. CONNELL was that his only child, ELEANOR, should
5 have the right to receive an amount equal to all of income generated from the Upton County, Texas,
6 Oil rights as long as ELEANOR lived. This makes perfect sense from an estate-planning point of
7 view in that the Upton County, Texas, Oil rights were the sole and separate property of W. N.
8 CONNELL that he brought into his second marriage with MARJORIE T. CONNELL, ELEANOR
9 was his only child, and ELEANOR was his child from a previous marriage.

10 II. DISCUSSION

11 A. The TRUST Must Be Construed To Mean That ELEANOR Has A Lifetime Beneficial 12 Interest In *All* Of The Income From The Upton County, Texas, Oil Rights Under 13 Nevada's Rules For Construction Of A Trust Instrument.

14 A Trust and its various provisions will be construed to effectuate the intent of the settlor.
15 *Hannan v. Brown*, 114 Nev. 350, 356, 956 P.2d 794, 798 (1998) (holding that when interpreting a
16 trust, Nevada "has historically construed trusts in a manner effecting the apparent intent of the
17 settlor"). Additionally, Nevada interprets trusts based on their plain language, as evidence outside
18 of the express text of the document will only be considered if the instrument is ambiguous. See
19 *State v. Courtesy Motors*, 95 Nev. 103, 106-07, 590 P.2d 163, 165 (1979). Thus, when a trust
20 instrument clearly sets forth how its assets are to be distributed, those terms will control.

21 Article FOURTH, *TRUST NO. 2*, Paragraph B, *Income*, of the TRUST agreement
22 specifically sets forth how the income of Trust No. 2 is to be paid. The first sentence of Paragraph
23 B of Article FOURTH states in part that "[a]ll income received by *this Trust* from the separate
24 property of the Decedent [W.N. CONNELL] shall be paid to the Residual Beneficiary
25 [ELEANOR]." (emphasis added). When referring to "this Trust," it is logical to conclude that
26 because this provision is under Article FOURTH, which relates to the distribution of income from
27 Trust No. 2, "this Trust" refers to Trust No. 2. Based on this first sentence, ELEANOR is entitled
28 to all of the separate property income of W.N. CONNELL generated by Trust No. 2.

1 The second sentence of Paragraph B of Article FOURTH states, "in the event any of the
2 real property located in Upton County, Texas, as listed on the original Schedule "A" attached
3 hereto, forms a part of the corpus of *this Trust*, the Residual Beneficiary [ELEANOR] shall be
4 paid an additional payment from the income received from the Decedent's [W.N. CONNELL]
5 half of the community property, which forms a part of the corpus of *this Trust*, equal to all of
6 the income received by *this Trust* from the real property located in Upton County, Texas."

7 (emphasis added). For the same reason stated in the preceding paragraph, the first reference in this
8 sentence to "this Trust" is referring to Trust No. 2.

9 The second reference to "this Trust" in the foregoing second sentence of Paragraph B or
10 Article FOURTH is also referring to Trust No. 2. As noted above, Trust No. 2 is the default trust to
11 which assets will be allocated if not otherwise allocated to Trust No. 3. The assets that could have
12 been allocated to Trust No. 3 pursuant to the TRUST agreement included, "(a) the Survivor's
13 [MARJORIE T. CONNELL] separate property interest in the trust estate; (b) the Survivor's
14 [MARJORIE T. CONNELL] one-half (1/2) interest in the community property of the trust estate,
15 less a proportionate part of all amounts properly chargeable against all community property; and (c)
16 the Survivor's [MARJORIE T. CONNELL] community property interest in any policy of insurance
17 on the life of the Decedent [W.N. CONNELL] owned by the Grantors as community property and
18 made payable to Trust No. 1." Additionally, an amount equal to the maximum marital deduction
19 could have been allocated to Trust No. 3, if necessary, from the Decedent's (W.N. CONNELL)
20 separate property. Accordingly, all of the Decedent's (W.N. CONNELL) one-half of the
21 community property would have been held in Trust No. 2 by default. It makes sense, then, that the
22 additional payment required to be made to ELEANOR "...from the income received from the
23 Decedent's [W.N. CONNELL] half of the community property, which forms a part of the
24 corpus of *this Trust*,..." would be made from Trust No. 2.

25 Thus, both the first and second reference in the second sentence of Paragraph B of Article
26 FOURTH to "this Trust" refer to Trust No. 2.

27 The third reference to "this Trust" in the second sentence of Paragraph B of Article
28 FOURTH cannot, however, refer to Trust No. 2 as this would result in an illogical conclusion. If

1 “this Trust” was read to refer to Trust No. 2, then it would render the first sentence of Paragraph B
2 of Article FOURTH superfluous. As noted above, the first sentence of Paragraph B of Article
3 FOURTH states, “[a]ll income received by *this Trust* from the separate property of the
4 Decedent [W.N. CONNELL] shall be paid to the Residual Beneficiary [ELEANOR].”
5 (emphasis added). Included in the Decedent’s (W.N. CONNELL) separate property are the Upton
6 County, Texas, Oil rights. Therefore, this first sentence already provides that ELEANOR is to
7 receive all of the income from W.N. CONNELL’s separate property that is made a part of Trust No.
8 2, including the income from the Upton County, Texas, Oil rights. Accordingly, when the third
9 reference to “this Trust” requires an additional payment from the community property of W.N.
10 CONNELL (the Decedent) “equal to all of the income received by *this Trust* from the real
11 property located in Upton County, Texas,” “this Trust” in that instance must be read to refer to
12 the TRUST as a whole. In other words, ELEANOR is entitled to all of the income from W.N.
13 CONNELL’s separate property held in Trust No. 2 plus an additional payment equal to all of the
14 income received by the TRUST from the Upton County, Texas, Oil rights to the extent there are
15 Upton County, Texas Oil rights not owned by Trust No. 2.

16 In essence, W.N. CONNELL (the Settlor) intended that ELEANOR receive all of the
17 income from the Upton County, Texas, Oil rights. This makes perfect sense from an estate-
18 planning point of view in that the Upton County, Texas, Oil rights were the sole and separate
19 property of W.N. CONNELL that he brought into his second marriage with MARJORIE T.
20 CONNELL, ELEANOR was his only child, and ELEANOR was his child from a previous
21 marriage.

22 In accordance with Nevada law and based on the plain meaning of the TRUST language
23 and the intent of settlor (W.N CONNELL) evinced thereby, the TRUST must be construed to mean
24 that ELEANOR has a lifetime beneficial interest in *all* of the income from the Upton County,
25 Texas, Oil rights.

26 ///

27 ///

28 ///

1 **B. ELEANOR Is Entitled To All Of The Income From The Upton, County, Texas Oil,**
2 **Rights Because There Was No Allocation Made To Trust No. 3 And Therefore The**
3 **Upton County, Texas, Oil Rights Were Allocated To Trust No. 2 By Default.**

4 Pursuant to NRS 163.385, *Acquisition and holding of property of two or more trusts undivided*,
5 states:

6 1. A fiduciary may:

7 (a) Acquire, receive, hold and retain the principal of several trusts created by a single
8 instrument undivided until division becomes necessary in order to make
9 distributions.

10 (b) Hold, manage, invest, reinvest and account for the several shares or parts of shares by
11 appropriate entries in the fiduciary's books of account, and allocate to each share or part
12 of share its proportionate part of all receipts and expenses.

13 2. The provisions of this section shall not defer the vesting in possession of any share or
14 part of share of the estate or trust. (emphasis added)

15 In this case, assuming that JACQUELINE MONTOYA is correct in that Trust No. 3 is
16 entitled to sixty-five percent (65%) of the Upton County, Texas, Oil rights, division between Trust
17 No. 2 and Trust No. 3 became necessary following the death of W.N. CONNELL in order to
18 distribute sixty-five percent (65%) of the Upton County, Texas, Oil rights to Trust No. 3. No such
19 allocation or division was made at the death of W.N. CONNELL. Division, again, became
20 necessary following the death of MARJORIE T. CONNELL in order to distribute sixty-five percent
21 (65%) of the Upton County, Texas, Oil rights to THE MTC LIVING TRUST pursuant to
22 MARJORIE T. CONNELL's exercise of her testamentary general power of appointment. This is
23 because Trust No. 3 and THE MTC LIVING TRUST are not created by a single instrument but two
24 (2) separate instruments. Again, no such allocation or division was made at the death of
25 MARJORIE T. CONNELL and no objection was raised by JACQUELINE MONTOYA at that
26 time.

27 ***Required Division After The Death Of W.N. CONNELL***

28 Proper allocation of the disputed sixty-five percent (65%) interest should have been
accomplished by the execution of a deed by the successor trustee (MARJORIE T. CONNELL)
conveying such interest to Trust No. 3, and would be done usually no later than nine (9) to twelve
(12) months following the death of W.N. CONNELL on November 24, 1979. Interestingly,
MARJORIE T. CONNELL was the sole Trustee of the TRUST following the death of W.N.

1 CONNELL (until the appointment of ELEANOR as co-Trustee on May 6, 1980) and the
2 beneficiary of Trust No. 3, and even she did not make the division required by NRS 163.385
3 (enacted in 1969) to Trust No. 3. Evidently, she did not believe that the Upton County, Texas, Oil
4 rights were to be allocated to Trust No. 3.

5 MARJORIE T. CONNELL would certainly have been personally aware of the necessity to
6 convey such disputed sixty-five percent (65%) interest via deed as it was necessary for W.N.
7 CONNELL to convey his total interest in the royalties and rent via deed to himself and MARJORIE
8 T. CONNELL as trustees of the TRUST when he and MARJORIE T. CONNELL established the
9 TRUST. MARJORIE T. CONNELL also had legal representation to assist her after the death of her
10 husband, and presumably such legal counsel would have advised her of the necessity to allocate the
11 disputed sixty-five percent (65%) to Trust No. 3 via deed if such interest was in fact to be allocated
12 to Trust No. 3. However, it is undisputed that legal title to such disputed sixty-five percent (65%)
13 interest was never allocated to Trust No. 3 via deed executed by MARJORIE T. CONNELL as
14 successor trustee of the TRUST.

15 MARJORIE T. CONNELL as successor trustee of the TRUST also had certain fiduciary
16 duties. This would include the duty of a trustee to comply with the terms of the trust as is
17 "[n]ecessary or appropriate to accomplish a purpose of the trust." NRS 163.023. Section 84 of the
18 Restatement (Third) of Trusts indicates in part "[i]t is ordinarily the duty of the trustee: to earmark
19 the trust property as property of the trust; to keep the trust property separate from the trustee's own
20 property; and to keep the trust property separate from property held by the trustee upon other
21 trusts."

22 If in fact the disputed sixty-five percent (65%) interest was to be allocated to Trust No. 3 as
23 alleged by the Petitioner JACQUELINE M. MONTROYA, MARJORIE T. CONNELL as successor
24 trustee was legally required to convey such interest via deed to the trustee of Trust No. 3 and keep it
25 separate from the assets of Trust No. 2. It speaks volumes that MARJORIE T. CONNELL did not
26 do so, and of course she is not there today to explain why this was not done by her. It is evident that
27 MARJORIE T. CONNELL understood that it was the intent of W.N. CONNELL that his only child,
28 ELEANOR, be entitled to the income from his sole and separate property consisting of all of the

1 Upton County, Texas, Oil rights during ELEANOR's lifetime as expressed in the TRUST
2 agreement, and the Upton County, Texas, Oil rights were accordingly treated as an asset of Trust
3 No. 2 and never deeded to Trust No. 3.

4 The only document produced by Petitioner JACQUELINE M. MONTOYA that tends to
5 show any semblance of an allocation is the 1980 Texas Inheritance Tax Return purportedly filed on
6 behalf of the W.N. CONNELL Estate. Upon closer review, however, nowhere in the document can
7 a distribution be linked to Trust No. 3 and in fact there are no references whatsoever to Trust No. 3
8 contained in the document. When referring to the alleged distribution that Petitioner
9 JACQUELINE M. MONTOYA relies on to claim the disputed interest in the royalties and rent, the
10 Texas Inheritance Tax Return states that the distributions were to "Marjorie Connell" and to
11 "Eleanor M. Connell Hartman." This is obviously incorrect and contrary to any possible
12 construction of the terms of the TRUST. Accordingly, the document upon which Petitioner
13 JACQUELINE M. MONTOYA bases her claim is materially false on its face. In any event, based
14 on this description to "Marjorie Connell" and to "Eleanor M. Connell Hartman," it takes quite the
15 leap to deduce that sixty-five percent (65%) of the Upton County, Texas, Oil rights were allocated
16 to Trust No. 3. Clearly this is inaccurate as no such distribution was ever made and there has been
17 no allegation in any proceeding that this was in fact the case. Relying on the purported Texas
18 Inheritance Tax Return would lead to the conclusion that the Upton County, Texas, Oil rights are
19 not held in trust at all; rather these rights were distributed to ELEANOR and MARJORIE T.
20 CONNELL individually. This is contrary to Petitioner JACQUELINE M. MONTOYA's own
21 stated position as set forth in her pleadings and the records of the oil companies.

22 Also it should be noted that the purported Texas Inheritance Tax Return does not even
23 contain a "FILED" stamp thereon in proof of filing. And the alleged check as proof of payment of
24 the Texas inheritance tax in compliance with the return is not even endorsed or stamped for
25 payment. For all of these reasons, the Texas Inheritance Tax Return cannot be given credence in
26 support of Petitioner JACQUELINE M. MONTOYA's allocation argument.

27 Also Article THIRD, *MARITAL DEDUCTION*, of the TRUST agreement states in part:

28 "In making the computations and allocations of the said property to Trust No. 3 as herein

1 required, the determination of the character and ownership of the said property and the value
2 thereof **shall be as finally established for federal estate tax purposes.**” (emphasis added)

3 Petitioner JACQUELINE M. MONTOYA has failed to produce a copy of the Form 706, the
4 federal estate tax return, filed on behalf of the W. N. CONNELL Estate and the TRUST in support
5 of her DECLARATORY JUDGMENT PETITION filed herein on September 27, 2013, and has
6 stated that she is unable to obtain a copy. This is a failure of Petitioner JACQUELINE M.
7 MONTOYA to carry her burden of proof regarding Petitioner JACQUELINE M. MONTOYA’s
8 2013 DECLARATORY JUDGMENT PETITION.

9 Furthermore, the purported Texas Inheritance Tax Return is incorrect on its face as it fails to
10 take into consideration the legal effect of Article *FOURTH, TRUST NO. 2*, Paragraph B, *Income*, of
11 the TRUST agreement, which states:

12 “All income received by this Trust from the separate property of the Decedent [W. N.
13 CONNELL] shall be paid to the Residual Beneficiary [ELEANOR]. In the event any of the
14 real property located in Upton County, Texas, as listed on the original Schedule “A”
15 attached hereto, forms a part of the corpus of this Trust, **the Residual Beneficiary
[ELEANOR] shall be paid an additional payment from the income received from the
Decedent’s [W. N. CONNELL] half of the community property, which forms a part of
the corpus of this Trust, equal to all of the income received by this Trust from the real
property located in Upton County, Texas.**” (emphasis added)

16 Schedule “A” attached to the TRUST agreement sets out the detailed legal descriptions of
17 the Upton County, Texas, real property as the “[s]eparate property of W. N. CONNELL.” Again, it
18 is obvious that the intent of Decedent W.N. CONNELL was that his only child, ELEANOR, should
19 have the right to receive an amount equal to all of the income generated from the Upton County,
20 Texas, Oil rights as long as ELEANOR lived. Again, this makes perfect sense from an estate-
21 planning point of view in that the Upton County, Texas, Oil rights were the sole and separate
22 property of W.N. CONNELL that he brought into his second marriage with MARJORIE T.
23 CONNELL, ELEANOR was his only child, and ELEANOR was his child from a previous
24 marriage.

25 ***Required Division After The Death Of MARJORIE T. CONNELL***

26 Assuming Petitioner JACQUELINE M. MONTOYA is correct in that sixty-five percent
27 (65%) of the disputed Upton County, Texas, Oil rights were allocated to Trust No. 3 via the 1980
28

1 Texas Inheritance Tax Return, and even if we disregard the fact that an allocation to Trust No. 3 did
2 not occur after the death of W.N. CONNELL, without dispute a division of such Upton County,
3 Texas, Oil rights should have occurred at the death of MARJORIE T. CONNELL. Again, no such
4 allocation was made.

5 Upon MARJORIE T. CONNELL's death, there were two (2) separate trusts created by two
6 (2) separate instruments, namely the TRUST and THE MTC LIVING TRUST. Accordingly, under
7 NRS 163.385, the disputed sixty-five percent (65%) interest in the Upton County, Texas, Oil rights
8 could not be held in a single trust, namely Trust No. 2. Thus, it was incumbent upon Petitioner
9 JACQUELINE M. MONTOYA to seek the allocation of the disputed sixty-five percent (65%) of
10 the Upton County, Texas, Oil rights to Trust No. 3 and thereafter to THE MTC LIVING TRUST
11 via the alleged exercise of MARJORIE T. CONNELL's power of appointment. Petitioner
12 JACQUELINE M. MONTOYA did not so act and this inaction on the part of Petitioner
13 JACQUELINE M. MONTOYA is contrary to the position she is now taking.

14 ***The Manner In Which The TRUST Received Its Royalty Payments Attendant To The Upton***
15 ***County, Texas, Oil Rights Is Further Proof That There Was Never An Allocation Of Such Rights***
16 ***To Trust No. 3***

17 In addition to the fact that never was an allocation to Trust No. 3 made following the death
18 of W.N. CONNELL or to Trust No. 3 and THE MTC LIVING TRUST after the death of
19 MARJORIE T. CONNELL, upon reviewing the Division Orders provided by the various oil lessees
20 relating to the Upton County, Texas, Oil rights, from approximately 1986 through the present, the
21 oil companies have remitted payment of the royalties to the tax identification number for Trust No.
22 2. The tax identification number for Trust No. 2 was provided to the oil companies by MARJORIE
23 T. CONNELL and ELEANOR. Trust No. 3 had a separate tax identification number that was never
24 furnished to, nor used by, the oil companies for such royalty payments. Notably, this has been the
25 practice since the death of W.N. CONNELL and even after the death of MARJORIE T. CONNELL.
26 Also, Petitioner JACQUELINE M. MONTOYA was extensively involved in dealing with the
27 Upton County, Texas, Oil rights, including dealing with the accountant, Corey Haina, in accounting
28 for the Upton County, Texas, Oil right income. Therefore, she was fully aware that the royalty

1 income from such rights was paid, in full, to Trust No. 2. Again, if an allocation was made to Trust
2 No. 3 in 1980, then MARJORIE T. CONNELL would have certainly sought to have the income
3 payments applied correctly back then. And even if MARJORIE T. CONNELL did not take such
4 action in 1980 or during the next twenty-nine (29) years preceding her death, Petitioner
5 JACQUELINE M. MONTOYA should have sought to change the payment of the Upton County,
6 Texas, Oil right income to the proper tax identification number of Trust No. 3 and THE MTC
7 LIVING TRUST in 2009, when MARJORIE T. CONNELL passed away and the Probate Court
8 obtained jurisdiction over the TRUST, and in 2012 when the Apache Corporation Oil and Lease
9 contracts were negotiated. Petitioner JACQUELINE M. MONTOYA failed to do so.

10 ***Conclusion***

11 As explained above, there was never an allocation of the Upton County, Texas, Oil rights, or
12 any part thereof, to Trust No. 3. Consequently, according to Subparagraph 4 of Paragraph C of the
13 TRUST agreement, if no allocation was made to Trust No. 3, then **“[t]he Trustee shall allocate to**
14 **Trust No. 2 all the remaining protion (sic) of the trust estate not allocated to Trust No. 3...”**
15 (emphasis added). And FOURTH, *TRUST NO. 2*, Paragraph B, *Income*, of the TRUST agreement
16 sets forth that, **“[a]ll income received by this Trust from the separate property of the Decedent**
17 **[W.N. CONNELL] shall be paid to the Residual Beneficiary [ELEANOR].”** (emphasis added).
18 Because no allocation of the Upton County, Texas, Oil rights was ever made to Trust No. 3, by
19 default these rights were allocated to Trust No. 2 and ELEANOR is the sole beneficiary of the
20 income paid from these rights, as they were W.N. CONNELL’s separate property.

21 Also Petitioner JACQUELINE M. MONTOYA claims that there was an exercise of a
22 testamentary power of appointment of Trust No. 3 to THE MTC LIVING TRUST under the terms
23 of the Last Will and Testament of MARJORIE T. CONNELL when she died on May 1, 2009.
24 Article FIFTH, *TRUST NO. 3*, Paragraph B, Powers of appointment over income and principal, of
25 the TRUST agreement grants a lifetime general power of appointment (not exercised) and a
26 testamentary general power of appointment over Trust No. 3 to the Survivor [MARJORIE T.
27 CONNELL], and in relevant part states:

28 “2. Upon the death of the Survivor, he or she shall have the absolute power to appoint

1 the entire principal and the undistributed income, if any, of the estate of Trust No. 3, or any
2 part thereof, to his or her estate or to any person or persons. Such power of appointment
shall be exercised only by a provision in the Last Will of the Survivor expressly exercising
such power.”

3 Even if for discussion purposes MARJORIE T. CONNELL did exercise her testamentary
4 power of appointment of Trust No. 3 to THE MTC LIVING TRUST pursuant to her Last Will And
5 Testament, there had never been an allocation of the sixty-five percent (65%) interest in the Upton
6 County, Texas, Oil rights to Trust No. 3 back in 1980. Such disputed interest was not an asset of
7 Trust No. 3 so the purported exercise of the testamentary power of appointment of Trust No. 3 to
8 THE MTC LIVING TRUST pursuant to her Last Will And Testament of MARJORIE T.
9 CONNELL had no effect on such disputed interest. More importantly, upon MARJORIE T.
10 CONNELL’s death in 2009, the sixty-five percent (65%) interest in the Upton County, Texas, Oil
11 rights should have been distributed to Petitioner JACQUELINE M. MONTOYA as sole successor
12 trustee of THE MTC LIVING TRUST. However, this was never done and Petitioner
13 JACQUELINE M. MONTOYA did not insist that it be done. Why? The answer is that it was not
14 considered an asset of Trust No. 3, but was considered an asset of Trust No. 2, which is completely
15 consistent with the actions of Petitioner JACQUELINE M. MONTOYA and her sister and the
16 documents they signed in the 2009 proceeding shortly after the death of MARJORIE T. CONNELL
17 as set out below. Accordingly, the disputed royalties and rent interest was not only never allocated
18 to Trust No. 3 when W. N. CONNELL died in 1979, it was never allocated to THE MTC LIVING
19 TRUST in 2009 when MARJORIE T. CONNELL died.

20 **C. The Doctrine Of Claim Preclusion Bars Petitioner JACQUELINE M. MONTOYA’s**
21 **Present Claim.**

22 The legal theory of issue preclusion, sometimes referred to as “collateral estoppel,” and the
23 legal theory of claim preclusion, are often confused. Although somewhat similar, they are
24 substantially different. Claim preclusion, under which a valid and final judgment on a claim
25 precludes a second action on that claim or any part of it, embraces all grounds of recovery that were
26 asserted in a suit, as well as those that could have been asserted, and thus has a broader reach than
27 issue preclusion. *Five Star Capital Corporation v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008).
28 While claim preclusion can apply to all claims that were or could have been raised in the initial

1 case, issue preclusion only applies to issues that were actually and necessarily litigated and on
2 which there was a final decision on the merits. *See Id.* The modern view is that claim preclusion
3 embraces all grounds of recovery that were asserted in a suit, as well as those that could have been
4 asserted in a suit, and thus has a broader reach than collateral estoppel. *University Of Nevada v.*
5 *Tarkanian*, 110 Ne. 581, 879 P.2d 1180, 97 Ed. Law Rep. 927 (1994); *Betterman v. Wells Fargo*
6 *Ag. Credit Corp.*, 802 P.2d 1112 (Colo.Ct.App. 1990); *Matter of Herbert M. Dowsett Trust*, 7
7 Haw.App. 640, 791 P.2d 398 (Ct. 1990); *Madsen v. Borthick*, 769 P.2d 245, 247 (Utah, 1998).
8 Claim preclusion applies to all grounds of recovery that were or could have been brought in the first
9 case. *Five Star Capital Corporation*, supra. Claim preclusion should apply if: (1) the parties or
10 their privies are the same; (2) the final judgment is valid; and (3) the subsequent action is based on
11 the same claims or any part of them that were or could have been brought in the first case. These
12 three factors, in varying language, are used by the majority of state and federal courts and the test
13 maintains the well-established principle that claim preclusion applies to all grounds of recovery that
14 were or could have been brought in the first case. *See Id.*

15 Claim preclusion is clearly applicable as a bar to the 2013 DECLARATORY JUDGMENT
16 PETITION filed by JACQUELINE M. MONTOYA, the second case dealing with the TRUST,
17 Trust No. 2, its assets, the income therefrom, the remainder interest, and the construction and
18 reformation of the TRUST agreement. The first case dealing with the TRUST, Trust No. 2, its
19 assets, the income therefrom, the remainder interest, and the construction and reformation of the
20 TRUST agreement was a Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And
21 Construe And Reform Trust that was filed on August 17, 2009 (the "2009 Petition"). The first
22 required factor for claim preclusion to be applicable is that the parties or their privies are the same
23 in both cases. In the 2009 case, the Petitioner was ELEANOR and JACQUELINE M. MONTOYA
24 was a necessary party who participated in the same. As noted above, in reality the action was
25 initiated and driven by JACQUELINE M. MONTOYA and her attorney, and primarily was for the
26 benefit of JACQUELINE M MONTOYA and her sister, KATHRYN A. BOUVIER. ELEANOR
27 was confirmed as Trustee of the TRUST in the first case. Not only did JACQUELINE M.
28 MONTOYA receive a copy of the 2009 Petition and a notice of the hearing thereon, she actively

1 participate in the case by signing a Consent to the Petition in which she stated that she had read the
2 Petition, believes it to be true and correct to the best of her knowledge, consents to the Petition, and
3 requests that the Court enter an Order approving the Petition in its entirety. JACQUELINE M.
4 MONTOYA is the Petitioner in the current 2013 declaratory judgment action, the second case
5 dealing with the TRUST, Trust No. 2, its assets, the income therefrom, the remainder interest, and
6 the construction and reformation of the TRUST agreement, against ELEANOR, individually and as
7 Trustee of the TRUST.

8 KATHRYN A. BOUVIER was also a necessary party to the 2009 Petition, the first case
9 dealing with the TRUST, Trust No. 2, its assets, the income therefrom, the remainder interest, and
10 the construction and reformation of the TRUST agreement. She not only received a copy of the
11 2009 Petition and a notice of the hearing thereon, she also actively participated in the first case by
12 signing a Consent to the Petition in which she stated that she had read the Petition, believes it to be
13 true and correct to the best of her knowledge, consents to the Petition, and requests that the Court
14 enter an Order approving the Petition in its entirety. KATHRYN A. BOUVIER is also a necessary
15 party in the 2013 declaratory judgment action, the second case dealing with the TRUST, Trust No.
16 2, its assets, the income therefrom, the remainder interest, and the construction and reformation of
17 the TRUST agreement, and a copy of the 2013 DECLARATORY JUDGMENT PETITION and a
18 Notice of the Hearing thereon were mailed to KATHRYN A. BOUVIER by Petitioner
19 JACQUELINE M. MONTOYA.

20 Further, JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER are sisters, the only
21 two children of ELEANOR. If the 2013 DECLARATORY JUDGMENT PETITION filed by
22 JACQUELINE M. MONTOYA in the second case is successful, not only will JACQUELINE M.
23 MONTOYA greatly benefit by receiving approximately thirty-three percent (33%) of the Oil
24 Assets, KATHRYN A. BOUVIER will also receive approximately thirty-three percent (33%) of the
25 Oil Assets. Obviously JACQUELINE M. MONTOYA is acting in privy with her sister,
26 KATHRYN A. BOUVIER. Similarly, JACQUELINE M. MONTOYA as trustee of THE MTC
27 LIVING TRUST is acting in privy with herself and her sister in that JACQUELINE M.
28 MONTOYA and KATHRYN A. BOUVIER as the only beneficiaries of such trust, and

1 JACQUELINE M. MONTOYA as trustee of the trust has absolute discretion to make distributions
2 of income and principal to herself and her sister. Interestingly enough, THE MTC LIVING TRUST
3 was prepared by attorney DAVID A. STRAUS, the same attorney who represented JACQUELINE
4 M. MONTOYA in the 2009 case.

5 Accordingly, the first factor for claim preclusion to apply is satisfied as the parties or their
6 privies are the same in the 2009 case and the current 2013 case.

7 The second required factor for claim preclusion to be applicable is that the final judgment in
8 the first case is valid. There is no question of the validity of the judgment in the first case, the 2009
9 case. As noted above, the 2009 Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And
10 Construe And Reform Trust was filed on August 17, 2009; a true and correct copy of the Petition
11 and Notice Of Hearing thereon was mailed to ELEANOR, JACQUELINE M. MONTOYA and
12 KATHRYN A. BOUVIER at their last known mailing addresses per Nevada law as evidenced by a
13 Certificate Of Mailing and Notice Of Hearing attesting to such mailing filed; on the hearing date of
14 September 4, 2009, an Order Assuming Jurisdiction Over Trust; Confirm Trustee; And For
15 Construction Of And Reform Of Trust Instrument was filed; a Notice Of Entry Of Order and
16 Certificate Of Mailing were filed attesting to the mailing of the Notice Of Entry Of Order and
17 Certificate Of Mailing and a copy of the Order Assuming Jurisdiction Over Trust; Confirm Trustee;
18 And For Construction Of And Reform Of Trust Instrument to ELEANOR, JACQUELINE M.
19 MONTOYA and KATHRYN A. BOUVIER at their last known mailing addresses per Nevada law;
20 and a search of the Register of Actions and pleadings in the first case shows no objection to, motion
21 for relief from, reconsider or appeal of such Order being filed. The time to object to, file a motion
22 for relief from, reconsider or appeal the Order has long past. Accordingly, the second factor for
23 claim preclusion to apply is satisfied as the Order entered in the first case in 2009 is valid.

24 The third and final required factor for claim preclusion to be applicable is that the
25 subsequent action is based on the same claims or any part of them that were or could have been
26 brought in the first case. The first case involved the TRUST, Trust No. 2, its assets, the income
27 therefrom, the remainder interest, and the construction and reformation of the TRUST agreement.
28 In particular, the Court assumed jurisdiction of the TRUST, the Court confirmed the Trustee

1 thereof, and the Court construed and reformed the TRUST agreement in part by declaring that
2 JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER were beneficiaries of Trust No. 2
3 upon the death of their mother, ELEANOR. The second case of 2013 also involves the TRUST,
4 Trust No. 2, its assets, the income therefrom, the remainder interest, and the construction and
5 reformation of the TRUST agreement. There is no question that the claims in the second case could
6 have been brought in the first case.

7 Further, the allegations in the 2009 Petition, the first case, were directly on point regarding
8 the dispute contained in the second case. Although this is not necessary for claim preclusion to
9 apply, one can argue that not only could the claim in the 2013 case have been brought in the 2009
10 case, in fact the dispute raised in the 2013 case, ownership of the Oil assets and the corresponding
11 entitlement to the income therefrom, was addressed in the 2009 Petition and Consents. The 2009
12 Petition specifically states that that: (1) as of the death of MARJORIE, Trust No. 2 owned land
13 and oil and gas shares in reserves and income located in Upton County, Texas (the "Oil
14 Assets"); and (2) pursuant to Article Fourth, which Article governs the administration of Trust No.
15 2, all income from the Oil Assets is to be paid to ELEANOR as the "Residual Beneficiary"
16 during her lifetime. The Consents of JACQUELINE M. MONTOYA (and KATHRYN A.
17 BOUVIER) filed in the 2009 case specifically state: (1) JACQUELINE M. MONTOYA has read
18 the Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust
19 and believes it to be true and correct to the best of her knowledge; and (2) JACQUELINE M.
20 MONTOYA consents to the Petition and requests that the Court enter an Order approving the
21 Petition in its entirety. Furthermore and most noteworthy, the Consents contain an affirmative
22 representation by JACQULINE M. MONTOYA (and KATHRYN A. BOUVIER) that she is only a
23 contingent income beneficiary of the TRUST. Now the 2013 DECLARATORY JUDGMENT
24 PETITION seeks in part a determination that ELEANOR, both individually and as Trustee of the
25 TRUST, "... is only entitled to a 35% proportion of all real property located in Upton County,
26 Texas, including the income generated from gas, oil, and mineral leases relating to such Upton
27 County, Texas real property..." The DECLARATORY JUDGMENT PETITION further seeks in
28 part a determination that JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER or Trusts

1 that they are beneficiaries of are entitled to 65% proportion of all real property located in Upton
2 County, Texas, including the income generated from gas, oil, and mineral leases relating to such
3 Upton County, Texas real property. This is completely contrary to and contradictory of the
4 statements and representations contained in the Petition and the Consents of JACQUELINE M.
5 MONTOYA and KATHRYN A. BOUVIER. For example, how could JACQUELINE M.
6 MONTOYA only be a contingent income beneficiary and ELEANOR be entitled to all of the
7 income for her life as JACQUELINE M. MONTOYA consented to and affirmatively asserted in the
8 2009 case, but now claim ELEANOR is only entitled to thirty-five percent (35%) of the income? It
9 is important to note that the claim of JACQUELINE M. MONTOYA in the 2013 case, that
10 ELEANOR is only entitled to thirty-five percent (35%) of the income and JACQUELINE M.
11 MONTOYA and her sister (or a trust of which they are beneficiaries thereof) are entitled to the
12 sixty-five percent (65%) interest in the Oil Assets, is based on her allegation that such right of
13 JACQUELINE M. MONTOYA and her sister (or a trust of which they are beneficiaries thereof) is
14 the result of a power of appointment exercised in the Last Will and Testament of MARJORIE T.
15 CONNELL. The date of death of MARJORIE T. CONNELL was May 1, 2009. The first case was
16 not filed until August 17, 2009, subsequent to the death of MARJORIE T. CONNELL.
17 JACQUELINE M. MONTOYA became the successor trustee of THE MTC LIVING TRUST
18 immediately upon the death of MARJORIE T. CONNELL. Therefore, this claim of JACQUELINE
19 M. MONTOYA, individually and as Trustee of THE MTC LIVING TRUST, as set forth in the
20 2013 case was fully vested and in existence at the time of the 2009 case.

21 It is a sad commentary that part of the Order in the 2009 case construed and reformed the
22 TRUST to provide that JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER are the
23 residuary beneficiaries of Trust No. 2 when ELEANOR dies. Apparently JACQUELINE M.
24 MONTOYA, and possibly KATHRYN A. BOUVIER, cannot wait until their 75 year old mother,
25 ELEANOR, dies before they enjoy the assets and income therefrom to the current detriment of their
26 own mother.

27 In any event, the third factor for claim preclusion to apply is satisfied as the subsequent 2013
28 action is based on the same claims that could have been brought in the first case of 2009. Further,

1 not only could the claim in the second case of 2013 have been brought in the first case of 2009,
2 arguably the claim in the 2013 case was brought and addressed in the 2009 case in that the
3 allegations and representations contained in the Petition and Consents filed in the first case of 2009
4 directly address the claim to sixty-five percent (65%) of the assets and income of the Trust No. 2
5 now raised in the 2013 case. Accordingly, the third factor for claim preclusion to apply is satisfied
6 both possible ways.

7 **D. JACQUELINE M. MONTOYA's Consent To Certain Statements Made In the 2009**
8 **Petition Constitute An Admission Against Interest Thereby Barring Her Present**
9 **Claim.**

10 As explained above, attached as Exhibit 6 to the 2009 Petition is the Consent To Petition To
11 Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust And Waiver Of
12 Notice Of JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER dated August 8, 2009.
13 Such Consents state, "I have read the Petition To Assume Jurisdiction Over Trust; Confirm
14 Trustee; And Construe And Reform Trust (the 'Petition') and believe it to be true and correct to the
15 best of my knowledge," and "I hereby consent to the Petition and request that the Court enter an
16 order approving the Petition in its entirety." (emphasis added). Importantly, JACQUELINE M.
17 MONTOYA and KATHRYN A. BOUVIER consented to Paragraph 18 of the Petition, which stated
18 "[a]s of the death of MARJORIE, Trust No. 2 owned land and oil and gas shares in reserves
19 and income located in Upton County, Texas (the 'Oil Assets'). The Oil Assets have not been
20 valued for some time, but are estimated to be worth approximately \$700,000." (emphasis
21 added). In fact, Petitioner JACQUELINE M. MONTOYA had an appraisal done of such "oil
22 assets" in 2009. This appraisal included all of the Texas oil rights, not just a thirty-five percent
23 (35%) interest. The appraisal set a valuation of \$716,190.00.

24 Because JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER consented to the
25 fact the value of the Upton County, Texas, Oil rights equaled "approximately \$700,000," which
26 represented the entire Upton County, Texas, Oil rights, and to the fact that such Upton County,
27 Texas, Oil rights were owned by Trust No. 2, JACQUELINE M. MONTOYA and KATHRYN A.
28 BOUVIER consented that *all* of the Upton County, Texas, Oil rights are owned by Trust No. 2.

1 This admission is entirely contrary to JACQUELINE M. MONTTOYA's current claim, and this
2 admission works to bar her claim to sixty-five percent (65%) of the Upton County, Texas, Oil
3 rights.

4 JACQUELINE M. MONTTOYA's legal counsel essentially asserted at the November 12,
5 2013 hearing that the allegations contained in the 2009 Petition were not important nor binding,
6 what was important and binding were the Order provisions. If one accepted this premise and
7 carried it to its logical conclusion, one could make any allegations whatsoever in a pleading,
8 whether true or untrue. For example, one could make numerous false representations to the Court
9 and they would not be important, only the Order provisions would be important, even though the
10 Court obviously considers the representations made in the pleading. The Nevada Rules of
11 Professional Conduct ("NRPC") make it abundantly clear that the allegations contained in a
12 pleading are important and there must be a basis in law and fact for the same, and there is a duty to
13 correct any false statement of material fact or law. NRPC 3.1, *Meritorious Claims and Contentions*,
14 states in relevant part:

15 "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein,
16 unless there is a basis in law and fact for doing so that is not frivolous, which includes a
17 good faith argument for an extension, modification or reversal of existing law."

18 NRPC 3.3, *Candor Toward the Tribunal*, states in relevant part:

19 "(a) A lawyer shall not knowingly:

20 (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of
21 material fact or law previously made to the tribunal by the lawyer;

22 (2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the
23 lawyer to be directly adverse to the position of the client and not disclosed by opposing
24 counsel; or

25 (3) Offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a
26 witness called by the lawyer, has offered material evidence and the lawyer comes to know of
27 its falsity, the lawyer shall take reasonable remedial measures, including, if necessary,
28 disclosure to the tribunal.

26 The Nevada Rules of Civil Procedure ("NRCP") also make it abundantly clear that the
27 allegations contained in a pleading are important and the factual contentions must have evidential
28

1 support. NRCP 11, *Signing of Pleadings*, states in relevant part:

2 “(b) **Representations to Court.** By presenting to the court (whether by signing, filing,
3 submitting, or later advocating) a pleading, written motion, or other paper, an attorney or
4 unrepresented party is certifying that to the best of the person’s knowledge, information, and
belief, formed after an inquiry reasonable under the circumstances,—

5 (1) it is not being presented for any improper purpose, such as to harass or to cause
unnecessary delay or needless increase in the cost of litigation;

6 (2) the claims, defenses, and other legal contentions therein are warranted by existing law or
7 by a nonfrivolous argument for the extension, modification, or reversal of existing law or the
establishment of new law;

8 (3) the allegations and other factual contentions have evidentiary support or, if specifically
9 so identified, are likely to have evidentiary support after a reasonable opportunity for further
investigation or discovery; and

10 (4) the denials of factual contentions are warranted on the evidence or, if specifically so
11 identified, are reasonably based on a lack of information or belief.

12 (c) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court
13 determines that subdivision (b) has been violated, the court may, subject to the conditions
stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that
have violated subdivision (b) or are responsible for the violation.”

14 **E. JACQUELINE M. MONTOYA’s Claim For Declaratory Relief Is Barred By The**
15 **Doctrine Of Unclean Hands.**

16 The unclean hands doctrine “bars a party from receiving equitable relief because of that
17 party’s own inequitable conduct.” *Las Vegas Fetish & Fantasy Halloween Ball, Inc., v. Ahern*
18 *Rentals, Inc.*, 124 Nev. 272, 275 (2008) (citing to *Food Lion, Inc. v. S.L. Nusbaum Ins. Agency, Inc.*,
19 2002 F.3d 223, 228 (4th Cir. 2000). “The unclean hands doctrine precludes a party from attaining
20 an equitable remedy when that party’s ‘connection with the subject-matter or transaction in
21 litigation has been unconscientious, unjust, or marked by the want of good faith.’” *Id.* (citing to
22 *Income Investors v. Shelton*, 3 Wash.2d 599, 101 P.2d 973, 974 (1940)). An intentional tortfeasor
23 cannot obtain equitable relief because she, by definition, request such relief with unclean hands. *Id.*
24 (citing to *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 610 (2000)). Equitable relief will be
25 barred under the doctrine of unclean hands when “(1) the egregiousness of the misconduct at issue
26 and (2) the seriousness of the harm caused by the conduct” weigh against granting such equitable
27 relief. *Id.* at 276.

28 Here, JACQUELINE M. MONTOYA has unclean hands in light of the following. First,

1 she, through her Texas legal counsel, sent demand letters and subsequent emails to the surface
2 tenant and oil companies concerning the Upton County, Texas, Oil rights, and demanded that they
3 withhold all royalty and rent payments to the TRUST notwithstanding the fact that the ownership of
4 only sixty-five percent (65%) of such rights are in dispute. Second, JACQUELINE M. MONTOYA
5 forged, or caused to be forged, ELEANOR's signature of on signature cards relating to
6 ELEANOR's personal bank accounts. Third, JACQUELINE M. MONTOYA attempted to probate
7 MARJORIE T. CONNELL's Last Will and Testament in Texas, without giving ELEANOR notice
8 of the same, and in doing so, JACQUELINE M. MONTOYA knowingly made blatant
9 misrepresentations to the Texas Probate Court.

10 ***Demand Letters and Subsequent Emails of Texas Legal Counsel of Petitioner JACQUELINE M.***
11 ***MONTOYA***

12 As discussed at length during the November 12, 2013 hearing in this matter, Texas legal
13 counsel for Petitioner JACQUELINE M. MONTOYA sent demand letters and emails to the surface
14 tenant and the oil companies informing them of this Nevada case and demanding that not only the
15 disputed sixty-five percent (65%) of royalties and rent be withheld, but all of the royalties and rent
16 be withheld including the thirty-five percent (35%) to which there is no dispute that ELEANOR is
17 entitled to. Petitioner JACQUELINE M. MONTOYA's Nevada legal counsel attempted to classify
18 these letters and emails as mere notices, not demands, at the November 12, 2013 hearing. An
19 examination of these correspondences reveals without question these were demands, not notices.

20 On September 30, 2013, only three (3) days after Petitioner JACQUELINE M. MONTOYA
21 filed her 2013 DECLARATORY JUDGMENT PETITION herein, Sean Guerrero, attorney at law,
22 of the Stubbeman, McRae, Sealy, Laughlin & Browder, Inc. Law Firm in Midland, Texas identified
23 himself as writing on behalf of his client, Petitioner JACQUELINE M. MONTOYA, and wrote:

24 **"I write on behalf of our client, Jacqueline M. Montoya,** individually and in her capacity
25 as trustee of the MCT (sic) Living Trust, Plaintiff in *Cause No. P-09-066425-T; In the*
26 *Matter of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972.* The
27 lawsuit referenced concerns oil and gas royalty and interest payments in the W. N. Connell
28 and Marjorie T. Connell Living Trust, Eleanor Ahern, Trustee. I enclose a copy of the filed
petition and confirmation of filing for your reference. We will follow up with a file-marked
copy of the petition once we have received it.

1 Due to the dispute regarding the distribution of payments, a portion of which had been made
2 by your company, we request that [Apache Corporation] [Plains Marketing, L.P.] [Drag
3 A Cattle Company] hold in suspense all payment to the W. N. Connell and Marjorie T.
4 Connell Living Trust until this lawsuit has been resolved. We request that you take
5 action immediately so that no further payments are distributed until this suit is
6 resolved. Please let me know if you have any question. We appreciate your cooperation
7 and look forward to working with you.”

8 Also, on October 10, 2013, Sean Guerrero wrote to Apache and stated, “[i]f you will
9 confirm when Apache places the royalty payments in to suspense, I would appreciate it.”

10 Again on November 14, 2013, Sean Guerrero wrote to Andy Taylor of Apache and said the
11 following:

12 “We have undertaken the lawsuit in Nevada to re-establish our client’s rights to 65%
13 distribution of the Trust and ultimately force Ms. Ahern out as Trustee...

14 ...Short of a court order, I do not see who (sic) you can legally and arbitrarily allocate 35%
15 of royalty payments to the Trustee of a trust and withhold 65% from the beneficiaries.
16 Apache would be wise to await a court order on the subject rather than taking the
17 word of Ms. Ahern’s attorney....

18 We have a complicated suit regarding the Trust distribution pending, and we will have a
19 second suit regarding Ms. Ahern’s misappropriation of Trust assets filed in short order. As a
20 result, we renew our request that Apache continue to hold all interest payments to the
21 Trust in suspense....” (emphasis added)

22 Clearly, these correspondences demand that all payments to the TRUST cease. These
23 correspondences are outrageous. They were intended by Petitioner JACQUELINE M. MONTOYA
24 to unnecessarily harm ELEANOR by preventing her from receiving her undisputed thirty-five
25 percent (35%) of the royalties and rent. This action on the part of Petitioner JACQUELINE M.
26 MONTOYA gives rise to actions against her by ELEANOR for, among other causes of action,
27 intentional interference with contractual relations – a tort. Accordingly, Petitioner JACQUELINE
28 M. MONTOYA is an “intentional tortfeasor” and by definition has unclean hands.

Closing of Trust Bank Account and Forged Signatures on Replacement Account

As noted above, without ELEANOR’s consent, Petitioner JACQUELINE M. MONTOYA
closed the bank account for the TRUST, which was established by MARJORIE T. CONNELL and

1 ELEANOR to receive the royalty payments from the Upton County, Texas, Oil rights. In its place,
2 Petitioner JACQUELINE M. MONTOYA opened an account on which Petitioner JACQUELINE
3 M. MONTOYA was the Customer. And upon looking into this matter further and hiring a
4 handwriting expert, ELEANOR discovered that Petitioner JACQUELINE M. MONTOYA forged,
5 or caused to be forged, ELEANOR's signature for this account. These actions on the part of
6 Petitioner JACQUELINE M. MONTOYA constitute inequitable conduct and bar her present claim.

7 *Texas Probate of the Marjorie T. Connell Estate*

8
9 On July 12, 2012, Petitioner JACQUELINE M. MONTOYA as Applicant filed an
10 Application for Original Probate of Foreign Will and Issuance of Letters of Independent
11 Administration (the "Texas Application") in the Estate Of MARJORIE T. CONNELL, Deceased, in
12 the County Court of Upton County, Texas, No. 1207-U1836-PRO. Petitioner JACQUELINE M.
13 MONTOYA's Nevada legal counsel attempted to classify this proceeding as a necessary ancillary
14 administration because of the Upton County, Texas, Oil rights at the November 12, 2013 hearing. It
15 is undisputed that at the time of her death, the Upton County, Texas, Oil rights were not titled in the
16 name of MARJORIE T. CONNELL but were titled in the name of the TRUST and that MARJORIE
17 T. CONNELL was a resident of Clark County, Nevada. Further, as noted above, the TRUST is
18 governed by Nevada law. Accordingly, no ancillary Texas probate administration of the
19 MARJORIE T. CONNELL Estate was necessary. However, Petitioner JACQUELINE M.
20 MONTOYA claims that MARJORIE T. CONNELL exercised a testamentary power of appointment
21 in her Last Will And Testament appointing Trust No. 3 to THE MTC LIVING TRUST, of which
22 Petitioner JACQUELINE M. MONTOYA is the sole trustee and of which Petitioner JACQUELINE
23 M. MONTOYA and her sister are the sole beneficiaries. The Texas probate proceeding was in fact
24 an effort by Petitioner JACQUELINE M. MONTOYA to have the Last Will And Testament
25 admitted to probate and the time pass for challenging the validity of the terms of the Will, all
26 unbeknownst to ELEANOR. This is evidenced by the fact that the Texas Application of Petitioner
27
28

1 JACQUELINE M. MONTOYA contains several falsehoods, including but not limited to the
2 following:

3 “3. **Decedent** [MARJORIE T. CONNELL] **owned oil, gas and mineral interests located**
4 **in Upton County, Texas**, of a probable value in excess of \$100,000.00.”

5 “5. To Applicant’s [JACQUELINE M. MONTOYA] knowledge, Decedent was married
6 one time only, such marriage being to W. N. Connell, who predeceased her. She was not
7 divorced after the making of her Will. **No child was ever** born to or **adopted by the**
8 **Decedent** [MARJORIE T. CONNELL].”

9 Applicant-Petitioner JACQUELINE M. MONTOYA has personal knowledge of, and has
10 known for years, that her mother, ELEANOR, was the adopted child of Decedent MARJORIE T.
11 CONNELL. In fact Petitioner JACQUELINE M. MONTOYA in Paragraph 1 of the Application
12 states she [JACQUELINE M. MONTOYA] “[is] a granddaughter of the Decedent ...” The only
13 way that Petitioner JACQUELINE M. MONTOYA could be the granddaughter of Decedent
14 MARJORIE T. CONNELL is if ELEANOR is the child of the Decedent MARJORIE T.
15 CONNELL.

16 Petitioner JACQUELINE M. MONTOYA also references THE MTC LIVING TRUST in
17 Paragraphs 11, 12 and 13 of the Texas Application. In particular, JACQUELINE M. MONTOYA
18 states in relevant part in Paragraph 13 of the Texas Application as follows:

19 “JACQUELINE M. MONTOYA is the current trustee of THE MTC LIVING TRUST, and
20 Kathryn Anne Bouvier is the successor trustee.”

21 Article Two, *Family Information*, of THE MTC LIVING TRUST states as follows:

22 “**I have one child ELEANOR C. HARTMAN AHERN, born on May 13, 1938.**”
23 (emphasis added)

24 Petitioner JACQUELINE M. MONTOYA as trustee of THE MTC LIVING TRUST
25 obviously knows the terms and provisions of THE MTC LIVING TRUST, including the fact that
26 ELEANOR is the child of Decedent MARJORIE T. CONNELL as stated and set forth therein. It is
27 self-evident that this blatantly false allegation that no child was ever adopted by Decedent
28 MARJORIE T. CONNELL contained in her Texas Application was an attempt by Petitioner

1 JACQUELINE M. MONTOYA to avoid having to give ELEANOR notice of the Texas
2 MARJORIE T. CONNELL Estate proceedings and an opportunity to object to the Last Will And
3 Testament of MARJORIE T. CONNELL under which the testamentary power of appointment of
4 Trust No. 3 to THE MTC LIVING TRUST was purportedly exercised, all as part of the plan of
5 Petitioner JACQUELINE M. MONTOYA to deprive ELEANOR of sixty-five percent (65%) of the
6 income from the Upton County, Texas Oil interests to the benefit of Petitioner JACQUELINE M.
7 MONTOYA and her sister. Again, this action on the part of Petitioner JACQUELINE M.
8 MONTOYA constitutes "inequitable conduct," "marked by want of good faith," and result in
9 Petitioner JACQUELINE M. MONTOYA having unclean hands.

10 ***Balancing Test***

11 As noted above, when determining whether a claim should be barred by the doctrine of
12 unclean hands, the egregiousness of the misconduct and the seriousness of the harm must weigh
13 against granting the equitable relief sought. In this case, the egregiousness of Petitioner
14 JACQUELINE M. MONOTOYA's misconduct and the seriousness of the harm caused thereby are
15 self-evident. In terms of the egregiousness of her misconduct, what can be more egregious than
16 making outright misrepresentations to the surface tenant, the oil companies and the Texas probate
17 court? And what can be more egregious than committing forgery or causing a forgery to be
18 committed?

19 In terms of the seriousness of the harm caused to ELEANOR by Petitioner JACQUELINE
20 M. MONOTOYA's actions, ELEANOR was required to employ legal counsel in both Texas and
21 Nevada to defend herself against JACQUELINE M. MONTOYA's actions. Further, as a result of
22 JACQUELINE M. MONTOYA's misrepresentations to the surface tenant and oil companies in
23 Upton County, Texas, the oil companies continue to withhold royalty payments otherwise payable
24 to ELEANOR as trustee of the TRUST. Such royalty payments are held in suspense and it is
25 ELEANOR's understanding that when they are finally paid to ELEANOR, the payments will not
26 include interest for the period the funds are withheld. Accordingly, not only is the TRUST
27 suffering monetary damages as a result of not receiving its scheduled Upton County, Texas, Oil
28 right payments, it will never be made whole. The legal fees incurred by ELEANOR as trustee of

1 the TRUST and the opportunity costs incurred by the TRUST amount to a serious harm.

2 The tortuous and likely criminal conduct engaged in by Petitioner JACQUELINE M.
3 MONTOYA and the harm caused thereby, weigh against granting any equitable relief sought by
4 JACQUELINE M. MONTOYA. This Court of equity should not reward Petitioner JACQUELINE
5 M. MONTOYA's unconscientious, unjust, and inequitable conduct.

6 **F. Detrimental Reliance/Promissory Estoppel Is Not Applicable To ELEANOR.**

7 Petitioner JACQUELINE M. MONTOYA claims to have detrimentally relied on
8 ELEANOR's purported "promise" to pay Petitioner JACQUELINE M. MONTOYA approximately
9 one-third (1/3rd) of the income from the Upton County, Texas, Oil rights. Petitioner
10 JACQUELINE M. MONTOYA claims to have quit her job, a job in which she was earning "over
11 \$100,000 annually," and "drastically altered [her] economic habits" in reliance on ELEANOR's
12 supposed promise. ELEANOR categorically denies that she ever promised to pay Petitioner
13 JACQUELINE M. MONTOYA (or her sister) approximately one-third (1/3rd) of the income from
14 the Upton County, Texas, Oil rights in perpetuity or that she discussed with Petitioner
15 JACQUELINE M. MONTOYA her quitting her job.

16 "The doctrine of promissory estoppel, which embraces the concept of detrimental reliance,
17 is intended as a substitute for consideration, and not as a substitute for an agreement between the
18 parties." *Vancheri v. GNLV Corp.*, 105 Nev. 417, 421 (1989) (citing *Kruse v. Bank of America*, 202
19 Cal.App.3d 38, 248 Cal.Rptr. 217 (1988). "Accordingly, the first prerequisite of the agreement is a
20 promise." *Id.* (citing *Irwin Concrete, Inc. v. Sun Coast Properties, Inc.*, 33 Wash.App. 190, 653,
21 653 P.2d 1331, 1337 (1982). Under section 90 of the Second Restatement of Contracts, [a] promise
22 which the promisor should reasonably expect to induce action or forbearance on the part of the
23 promisee or a third person and which does induce such action or forbearance is binding if injustice
24 can be avoided only by enforcement of the promise."

25 Detrimental reliance and promissory estoppel are contract related terms used only to
26 overcome the lack of a valid contract for want of consideration, but consideration is only one
27 element of contract formation. For a valid contract, there must also be a promise or an offer and
28 acceptance. JACQUELINE M. MONTOYA claims that "[w]hen the income from the leases started

1 to increase dramatically over the recent years, Jacqueline specifically asked Ms. Ahern if she
2 thought the oil, gas, and mineral income would continue to remain at high levels. Ms. Ahern
3 assured her it would and specifically encouraged Jacqueline to quit her job and become a stay-at-
4 home mother for her boys. To her detriment, Jacqueline relied on Ms. Ahern's representations and
5 quit her job." Even for the sake of argument, if this could be construed as an offer and acceptance,
6 the statute of frauds would surely prevent enforcement of this purported "agreement." The statute
7 of frauds requires certain contracts to be in writing and these contracts include those for a
8 conveyance of an interest in land (See NRS 111.210(1)) and those that cannot be performed within
9 one year (See NRS 111.220(1)). Accordingly, payment of the royalties and rent to Petitioner
10 JACQUELINE M. MONTOYA, KATHRYN A. BOUVIER and/or the MTC TRUST in perpetuity
11 would violate the statute of frauds. Note, JACQUELINE M. MONTOYA's representation of
12 ELEANOR's so-called "promise", as quoted above, is unlikely to be considered a promise or offer
13 in any event. Within this quote, there is no communication on the part of ELEANOR of an offer
14 and there were no definite and/or certain terms.

15 Petitioner JACQUELINE M. MONTOYA also argues that she should be entitled to a sixty-
16 five percent (65%) distribution of the royalties and rent because this has been the "course of
17 performance." Essentially, Petitioner JACQUELINE M. MONTOYA contends that the course of
18 dealing has created a contractual obligation on the part of ELEANOR. However, this position is
19 contrary to the law governing contracts. Quite simply "[c]ourse of dealing does not create a
20 contract." *Keith Equip. Co. v. Casa Grande Cotton Fin. Co.*, 928 P.2d 683, 686 (Ariz. App. 2d Div.
21 1996).

22 Additionally, Petitioner JACQUELINE M. MONTOYA fails to point out that she and her
23 sister, KATHRYN A. BOUVIER, as equal beneficiaries of THE MTC LIVING TRUST have
24 inherited the total, combined sum of Four Million Six Hundred and Five Thousand Dollars
25 (\$4,605,000.00) since 2009 (Three Million Five Hundred Thousand Dollars (\$3,500,000.00) upon
26 the death of MARJORIE T. CONNELL in 2009 and One Million One Hundred Five Thousand
27 Dollars (\$1,105,000.00) lease bonus in 2012). Petitioner JACQUELINE M. MONTOYA's share
28 and her sister's share as equal beneficiaries of THE MTC LIVING TRUST would be Two Million

1 Three Hundred Two Thousand Five Hundred Dollars (\$2,302,500.00) each. Thus, it is hard to
2 believe that they have suffered any detriment.

3 **G. The Doctrine Of Laches Cannot Be Applied Against ELEANOR; However, The**
4 **Doctrine Of Laches Can Be Applied Against JACQUELINE M. MONTOYA.**

5 “Laches is an equitable doctrine invoked when delay by one party works to the disadvantage
6 of the other, causing a change of circumstances which would make the grant of relief to the
7 delaying party inequitable.” *Building & Constr. Trades v. Public Works*, 108 Nev. 605, 610-11,
8 836 P.2d 633,636-37 (1992). “Laches is more than a mere delay in seeking to enforce one’s rights;
9 it is a delay that works to the disadvantage of another.” *Carson City v. Price*, 113 Nev. 409, 412,
10 934 P.2d 1042, 1043 (1997) citing *Home Savings v. Bigelow*, 105 Nev. 494, 496, 779 P.2d 85, 86
11 (1989). “The condition of the party asserting laches must become so changed that the party cannot
12 be restored to its former state.” *Id.*, 779 P.2d at 86.

13 In her pleadings, JACQUELINE M. MONTOYA asserts that even if “there was an error in
14 the allocation,” “[Ms. Ahern] was obligated to make this assertion approximately 33 years ago.”
15 This argument misses the point. There was no allocation and ELEANOR is entitled to all of the
16 Upton County, Texas Oil right income and therefore, there was no “assertion” for her to make. To
17 the contrary, because there was no allocation and because ELEANOR is entitled to all of the Upton
18 County, Texas, Oil right income, it was MARJORIE T. CONNELL and thereafter JACQUELINE
19 M. MONTOYA who were required to assert a right to sixty-five percent (65%) of the Upton
20 County, Texas, Oil right income.

21 Following the death of W.N. CONNELL and the alleged allocation of sixty-five percent
22 (65%) of the Upton County, Texas, Oil rights to Trust No. 3, MARJORIE T. CONNELL was a
23 Trustee of the TRUST; therefore, she was aware that there had been no deed or other document of
24 conveyance created and/or recorded to transfer sixty-five percent (65%) of the Upton County,
25 Texas, Oil rights to Trust No. 3. Furthermore, until her death, MARJORIE T. CONNELL
26 acquiesced to the oil companies paying all of the Upton County, Texas, Oil right income to Trust
27 No. 2, and never made a claim to reallocate such payments so that sixty-five percent (65%) would
28 be remitted to Trust No. 3.

1 Moreover, despite her knowledge of there being two trusts and her belief that she, as Trustee
2 of THE MTC LIVING TRUST, was entitled to sixty-five percent (65%) of the Upton County,
3 Texas, Oil rights, JACQUELINE M. MONTOYA failed to assert a timely claim to such rights. It is
4 clear from the 2009 Petition and Consent of Petitioner JACQUELINE M. MONTOYA that
5 Petitioner JACQUELINE M. MONTOYA was aware that there are two trusts, to-wit: Trust No. 2
6 and Trust No. 3. Despite this, however, JACQUELINE M. MONTOYA failed to bring a claim
7 back in 2009 to the disputed interest when the Probate Court took jurisdiction over the TRUST and
8 reformed the same.

9 Again, in April 2012, Petitioner JACQUELINE M. MONTOYA negotiated new Oil and Gas
10 Lease contracts with Apache Corporation relative to the Upton County, Texas, Oil rights and never
11 made a claim to the Upton County, Texas, Oil rights. In fact, once these Oil and Gas Lease
12 contracts were prepared, JACQUELINE M. MONTOYA presented the same to ELEANOR for her
13 approval and signature. ELEANOR signed both Oil and Gas Lease contracts “[i]**ndividually and**
14 **as Trustee of the W.N. Connell and Marjorie T. Connell Living Trust under Trust Agreement**
15 **dated May 18, 1972**” (emphasis added) and as sole lessor. Because these Oil and Gas Lease
16 contracts were executed approximately three (3) years after MARJORIE T. CONNELL’s death and
17 the exercise of her power of appointment over Trust No. 3, JACQUELINE M. MONTOYA would
18 have been *required* to sign the Oil and Gas Lease contracts as sole Successor Trustee of THE MTC
19 LIVING TRUST and co-lessor (assuming there had been an allocation of sixty-five percent (65%)
20 of the Upton County, Texas, Oil rights to Trust No. 3). This never happened and JACQUELINE M.
21 MONTOYA failed to make a claim to such rights in 2012.

22 Now, approximately thirty-four (34) years after the death of W.N. CONNELL and nearly
23 four (4) years after the death of MARJORIE T. CONNELL, JACQUELINE M. MONTOYA seeks
24 to change the manner in which title is held to the Upton County, Texas, Oil rights. Given
25 JACQUELINE M. MONTOYA’s extensive involvement with the Upton County, Texas, Oil rights
26 dating back before MARJORIE T. CONNELL’s death, JACQUELINE M. MONTOYA could have
27 and should have brought her claim much earlier – specifically, before MARJORIE T. CONNELL’s
28 death and thereafter in the 2009 case.

1 As Petitioner JACQUELINE M. MONTOYA has aptly pointed out in her pleadings,
2 MARJORIE T. CONNELL was a material witness, as she was the surviving Trustor and a Co-
3 Trustee; however, she is now deceased. If MARJORIE T. CONNELL was available, she could
4 testify to the fact that there was never an allocation of the Upton County, Texas, Oil rights to Trust
5 No. 3, and this was done intentionally to preserve W.N. CONNELL's sole and separate property for
6 his only daughter (ELEANOR). However, because Petitioner JACQUELINE M. MONTOYA
7 delayed the assertion of her claim for so long, ELEANOR is now disadvantaged. The only person
8 alive who could have testified in ELEANOR's favor is now gone.

9 For these reasons, this Court should apply the doctrine of laches against Petitioner
10 JACQUELINE M. MONTOYA for she has delayed the assertion of her claim for much too long,
11 not to mention that Petitioner JACQUELINE M. MONTOYA has made contradictory and
12 inconsistent allegations in her Consent to the 2009 Petition and her 2013 DECLARATORY
13 JUDGMENT PETITION. And as a result, ELEANOR is greatly disadvantaged in her ability to
14 defend such claim.

15 **H. JACQUELINE M. MONTOYA Has Failed To Provide Evidence Proving The Validity**
16 **Of MARJORIE T. CONNELL's Last Will And Testament; Therefore JACQUELINE**
17 **M. MONTOYA Has Failed To Prove A Necessary Element Of Her Case.**

18 As noted above, Article FIFTH, *TRUST NO. 3*, Paragraph B, *Powers of appointment over*
19 *income and principal*, of the TRUST agreement grants a lifetime general power of appointment (not
20 exercised) and a testamentary general power of appointment over Trust No. 3 to the Survivor
21 [MARJORIE T. CONNELL], and in relevant part states:

22 "2. Upon the death of the Survivor, he or she shall have the absolute power to appoint
23 the entire principal and the undistributed income, if any, of the estate of Trust No. 3, or any
24 part thereof, to his or her estate or to any person or persons. Such power of appointment
25 shall be exercised only by a provision in the Last Will of the Survivor expressly exercising
26 such power."

27 Article FIFTH, *TRUST NO. 3*, Paragraph C, *Death of Survivor* (MARJORIE T. CONNELL)
28 of the TRUST states in relevant part:

"If and to the extent that the Survivor [MARJORIE T. CONNELL] shall fail to
effectively exercise the foregoing power of appointment, the principal and

1 **undistributed income of Trust No. 3 shall, upon his or her death, be distributed to the**
2 **Residual Beneficiary [ELEANOR]...**” (emphasis added)

3 The TRUST, therefore, required that in order to exercise her testamentary general power of
4 appointment, MARJORIE T. CONNELL was required to do so through her Last Will and Testament.
5 MARJORIE T. CONNELL’s Last Will and Testament refers to the foregoing testamentary general
6 power of appointment and allegedly appoints the property of Trust No. 3 to THE MTC LIVING
7 TRUST. However, never has MARJORIE T. CONNELL’s Last Will and Testament been probated
8 and determined to be valid. As noted above, Petitioner JACQUELINE M. MONTOYA filed the Texas
9 Application on July 12, 2012 wherein she sought to have MARJORIE T. CONNELL’s Last Will and
10 Testament probated in the County Court of Upton County, Texas. However, also as noted above,
11 when ELEANOR found out about this probate proceeding, she objected to the same on jurisdictional
12 grounds as MARJORIE T. CONNELL died a Nevada resident, and her Last Will and Testament and
13 the TRUST are all governed by Nevada law and should be probated here in Nevada. To date, the
14 Texas probate proceeding has been postponed, and to ELEANOR’s knowledge there have been no
15 further efforts on the part of JACQUELINE M. MONOTYA to probate MARJORIE T. CONNELL’s
16 Last Will and Testament.

17 Without MARJORIE T. CONNELL’s Last Will and Testament having been probated and
18 deemed valid, MARJORIE T. CONNELL’s alleged power of appointment, referenced within such
19 Last Will and Testament, is not validly exercised. “In order that a power of appointment may be
20 validly exercised by means of a will of a donee of such power, it is necessary that in its formal
21 execution the will of such donee be valid.” *In re Sloan's Est.*, 46 P.2d 1007, 1013 (Cal. App. 2d Dist.
22 1935). Even if there are no assets of a decedent that would otherwise be subject to probate,
23 adjudication by a probate court is required to determine the validity of the decedent’s will when
24 such decedent transfers property through a general power of appointment contained in his or her
25 will. *In re Est. of Scott*, 77 P.3d 906, 909 (Colo. App. 2003) (quoting The Restatement (Third) of
26 Prop.: Wills and other Don. Trans. § 1.1 cmt. b at 7 which states “[t]hus, the trust assets are not part
27 of the probate estate and, but for the requirement that the general power of appointment be
28 exercised by will, no probate would be required on this account,” and Colo. Rev. Stat. Ann. § 15-
12-102 (West) which states, “to be effective to prove the transfer of any property or to nominate an

1 executor, a will must be declared to be valid by an order of informal probate by the registrar, or an
2 adjudication of probate by the court....”).

3 In this case, Petitioner JACQUELINE M. MONTOYA predicates her argument that she or a
4 trust of which is a beneficiary of, namely THE MTC LIVING TRUST, owns sixty-five percent
5 (65%) of the Upton County, Texas, Oil rights via the power appointment allegedly exercised by
6 MARJORIE T. CONNELL in her Last Will and Testament. In order to prove and be successful on
7 this argument, however, JACQUELINE M. MONTOYA must first establish the validity of
8 MARJORIE T. CONNELL’s Last Will and Testament. This only makes logical sense for if
9 MARJORIE T. CONNELL’s Last Will and Testament is determined to be invalid, so too is her
10 power of appointment. Heretofore, however, JACQUELINE M. MONOTYA has failed to establish
11 the fact that MARJORIE T. CONNELL’s Last Will and Testament is in fact valid and not subject to
12 challenge. Therefore, JACQUELINE M. MONTOYA has failed to prove a necessary element of
13 her case.

14 III. CONCLUSION

15 In summary, the intent of the W.N. CONNELL and MARJORIE T. CONNELL as
16 evidenced by language of the TRUST itself and the conduct of all parties interested in the TRUST
17 in not allocating any portion of the Upton County, Texas, Oil rights to Trust No. 3 establishes that
18 these rights are owned by Trust No. 2 and that ELEANOR is the only beneficiary of that trust
19 during her lifetime. Further, even if this evidence is insufficient to establish ELEANOR’s one
20 hundred percent (100%) right to the income from the Upton County, Texas, Oil rights,
21 JACQUELINE M. MONTOYA’s present claim is barred by claim preclusion and the doctrine of
22 laches. Additionally, JACQUELINE M. MONTOYA has failed to sufficient prove essential
23 elements of her case thereby making dismissal of her case proper.

24 ///

25 ///

26 ///

27 ///

28 ///

1 DATED: February 11, 2014.

2 JEFFREY BURR, LTD

3 By: 

4 JOHN R. MUGAN, ESQUIRE

5 Nevada Bar No. 10690

6 MICHAEL D. LUM, ESQUIRE

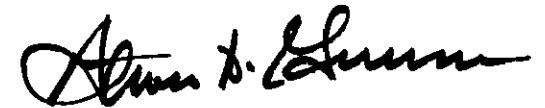
7 Nevada Bar No. 12997

8 2600 Paseo Verde Parkway, Suite 200

9 Henderson, Nevada 89074

10 *Attorneys for Trustee ELEANOR CONNELL*

11 *HARTMAN AHERN*



CLERK OF THE COURT

1 **MOT**

2 THE RUSHFORTH FIRM, LTD.

3 JOSEPH J. POWELL

4 State Bar No. 8875

5 P. O. Box 371655

6 Las Vegas, NV 89137-1655

7 Telephone (702) 255-4552

8 fax: (702) 255-4677

9 e-mail: probate@rushforthfirm.com

10 Attorneys for Jacqueline M. Montoya

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 In re the Matter of the

14 THE W.N. CONNELL and MARJORIE

15 T. CONNELL LIVING TRUST, dated

16 May 18, 1972

17 A non-testamentary trust.

Case No.: P-09-066425-T

Department: 26 (Probate)

18 **MOTION TO DISMISS AND MOTION TO STRIKE COUNTERCLAIMS RAISED BY ELEANOR**
19 **C. AHERN PURSUANT TO NRCP 15 AND NRCP 12(B)**

20 Date of Hearing: N/A

21 Time of Hearing: N/A

22 JACQUELINE M. MONTOYA ("Jacqueline"), as both an individual and as the trustee
23 of the "MTC Living Trust" dated December 6, 1995, by and through her counsel of record,
24 JOSEPH J. POWELL, Esq., of THE RUSHFORTH FIRM, LTD., hereby brings this "Motion
25 to Dismiss and Motion to Strike Counterclaims Raised by Eleanor C. Ahern Pursuant to
26 NRCP 15 and NRCP 12(B)" in reference to the counterclaims sought by ELEANOR C.
27 AHERN in her "Answer of Trustee Eleanor C. Ahern to Jacqueline M. Montoya's Petition
28

1 for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS
2 30.040, NRS 153.031(1)(e), and NRS 164.033(1)(a) and Counterclaims against Jacqueline
3 M. Montoya” dated January 31, 2012, filed on February 10, 2014, with a certificate of
4 mailing dated February 11, 2014 (“Answer”). Jacqueline declares the following:
5

6 **A. COUNTERCLAIMS ARE RAISED AT THE LAST MINUTE AND BEYOND THE SCOPE OF**
7 **WHAT THIS TRIAL IS INTENDED TO COVER AND ARE INAPPROPRIATELY MADE**

8 A.1 The fact of the matter is that Ms. Ahern has filed a responsive pleading to
9 Jacqueline’s “Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets
10 Pursuant to NRS 30.040, NRS 153.031(1)(e), and NRS 164.033(1)(a)” (“Petition”) a
11 significant time ago.
12

13 A.2 Despite not being titled as an “answer” or “objection” to the “Petition”, Ms.
14 Ahern has previously responded to the Petition on multiple occasions. In her “Motion to
15 Refer Contested Probate Matter to Master-Probate Commissioner Per EDCR 4.16”, dated
16 November 4, 2013 (“Motion to Refer”), Ms. Ahern made substantive assertions and
17 responses to the claims found in Jacqueline’s Petition. The Motion to Refer was then
18 followed up by Ms. Ahern’s “Motion to Dismiss Petition for Declaratory Judgment
19 Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(e), and
20 NRS 164.033(1)(a) for Failure to State a Claim Upon Which Relief Can Be Granted Per
21 NRCP 12(b)(5)”, dated November 26, 2013 (“Motion to Dismiss”), which again contained
22 substantive replies, arguments, and counterpoints which addressed the issues and points
23 raised in Jacqueline’s Petition.
24

25 A.3 Therefore, both the Motion to Refer and the Motion to Dismiss were clearly
26 responsive pleadings.
27
28

1 A.4 NRCF Rule 15(a) provides for the following:

2 *(a) Amendments. A party may amend the party's pleading once as a matter*
3 *of course at any time before a responsive pleading is served or, if the*
4 *pleading is one to which no responsive pleading is permitted and the action*
5 *has not been placed upon the trial calendar, the party may so amend it at*
6 *any time within 20 days after it is served. Otherwise a party may amend the*
7 *party's pleading only by leave of court or by written consent of the adverse*
8 *party; and leave shall be freely given when justice so requires. A party shall*
9 *plead in response to an amended pleading within the time remaining for*
10 *response to the original pleading or within 10 days after service of the*
11 *amended pleading, whichever period may be the longer, unless the court*
12 *otherwise orders.*

13 A.5 Responsive pleadings to both the Motion to Refer and the Motion to Dismiss
14 were filed by Jacqueline. As to the Motion to Refer, Jacqueline filed her "Response to
15 Motion to Refer Contested Probate Matter to Master-Probate Commissioner Per EDCR
16 4.16" on November 7, 2013. As to the Motion to Dismiss, Jacqueline filed her "Objection
17 to Motion to Dismiss Petition for Declaratory Judgment Regarding Limited Interest of
18 Trust Assets Pursuant to NRS 30.040, NRS 153.031(e), and NRS 164.033(1)(a) for Failure
19 to State a Claim Upon Which Relief Can Be Granted Per NRCF 12(b)(5)" on December 11,
20 2013.

21 A.6 Not once did Ms. Ahern previously seek leave of the Court to amend her
22 responsive pleadings. As such, Ms. Ahern's attempts to now assert new counterclaims
23 against Jacqueline are untimely and inappropriate. They were not previously raised, and
24 they are being raised mere days before the start of trial on Jacqueline's Petition.

25 A.7 As such, in accordance with NRCF Rule 15, Jacqueline respectfully requests
26 that this Court dismiss and strike the counterclaims now being asserted in Ms. Ahern's
27 Answer.

28 A.8 NRCF Rule 12(B) states in pertinent that "Every defense, in law or fact, to a

1 claim for relief in any pleading, whether a claim, **counterclaim**, cross-claim, or third-party
2 claim, **shall be asserted in the responsive pleading thereto** if one is required
3 .” [Emphasis Added].
4

5 A.9 The point of both cited NRCP rules is to allow adequate time for the
6 preparation to respond and for discovery and briefing of any counterclaims, which clearly
7 cannot be done mere days before a scheduled trial.

8 A.10 To allow Ms. Ahern to actively assert these counterclaims at this late date and
9 seek to include them as topics that are subject to decision at the upcoming trial on
10 Jacqueline’s Petition would be extremely prejudicial and unfair to Jacqueline and cannot
11 be permitted. As such, it is only proper and just that this Court dismiss and strike such
12 counterclaims immediately from the Answer, which again has already been presented in
13 two previous forms.
14

15 **B. CONCLUSION AND REQUEST FOR DAMAGES**

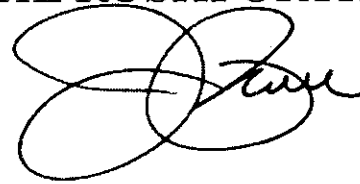
16

17 B.1 Jacqueline respectfully requests that this Court award her damages consisting
18 of related attorney’s fees and costs in having to prepare this Motion. As the full extent of
19 such damages is not yet known, Jacqueline shall provide such amounts to this Court at a
20 later date.
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1 B.2 The inclusion of Ms. Ahern's counterclaims in a last minute pleading have not
2 been raised appropriately and are an unwarranted attempt to broaden the scope of the
3 upcoming trial. Such action cannot be allowed by this Court so close to trial, which shall
4 consist solely of the issues raised in Jacqueline's Petition, which is the reason and basis for
5 the trial to occur in the first place.
6

7
8 Respectfully submitted,

9 THE RUSHFORTH FIRM, LTD.

10 
11

12 _____
13 JOSEPH J. POWELL
14 State Bar No. 8875
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate -
Trust/Conservatorships**

COURT MINUTES

February 18, 2014

P-09-066425-T In the Matter of the Trust of:
The W.N. Connell and Marjorie T. Connell Living Trust, dtd May 18, 1972

February 18, 2014 10:00 AM Bench Trial

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Linda Denman

RECORDER: Kerry Esparza

| | | |
|-----------------|-----------------------|-------------------------|
| PARTIES | Ahern, Eleanor C | Respondent |
| PRESENT: | Lum, Michael | Attorney for Respondent |
| | Montoya, Jacqueline M | Petitioner |
| | Mugan, John R. | Attorney for Respondent |
| | Powell, Joseph J | Attorney for Petitioner |

JOURNAL ENTRIES

- BENCH TRIAL - DAY 1

Mr. Powell raised concerns about the counter-claims included in Respondent's Answer filed last week, specifically the no-contest clause and the tortious interference with a contract and asked that they be dismissed for lack of notice. Colloquy as to whether the trial could proceed on the petition or whether all issues had to be litigated at one time. Following the discussion, COURT STATES ITS FINDINGS that the counter-claims are valid affirmative defenses arising from the same occurrence. Counsel requested a break to discuss options with their clients.

Court resumed and counsel stated they were in agreement to continue the trial and a new trial date was given for the August stack. Court mentioned they might also want to bifurcate the tort issue if Discovery could not be completed. Mr. Powell requested fees and costs for preparing for today's trial and Court directed him to prepare an Affidavit. He also requested the matter be returned to status quo in which the trust was distributed 65/35 for the last 33 years. Court requested the matter be in writing. Court returned all exhibits to counsel and stated an amended trial order would be sent.

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EXHIBIT H
Death Certificate of Marjorie T. Connell

**STATE OF NEVADA — DEPARTMENT OF HUMAN RESOURCES
DIVISION OF HEALTH — VITAL STATISTICS**

CERTIFICATE OF DEATH

2009006369

STATE FILE NUMBER

| | | | | | | | | | | | |
|--|--|--|---|-----------------------------------|--|--|---|-------------------------------------|---|-------|--|
| TYPE OR PRINT IN PERMANENT BLACK INK | 1a. DECEASED NAME (FIRST, MIDDLE, LAST, SUFFIX) Marjorie T CONNELL | | | | | 2. DATE OF DEATH (Mo/Day/Year) May 01, 2009 | | 3a. COUNTY OF DEATH Clark | | | |
| | 3b. CITY, TOWN, OR LOCATION OF DEATH Las Vegas | | 3c. HOSPITAL OR OTHER INSTITUTION - Name (If not either, give street and number) Valley Hospital Medical Center | | | 3e. If Hosp or Inst indicate DOA, OP/Emar Rm. Inpatient (Specify) Inpatient | | 4. SEX Female | | | |
| | 5. RACE White (Specify) | | 6. Hispanic Origin? Specify No - Non-Hispanic | | 7a. AGE - Last birthday (Years) 91 | | 7b. UNDER 1 YEAR MOS | | 7c. UNDER 1 DAY HOURS | | |
| | 8. DATE OF BIRTH (Mo/Day/Yr) March 02, 1918 | | 9a. STATE OF BIRTH (If not U.S.A., name country) Alabama | | 9b. CITIZEN OF WHAT COUNTRY United States | | 10. EDUCATION 14 | | 11. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (Specify) Widowed | | |
| IF DEATH OCCURRED IN INSTITUTION SEE HANDBOOK REGARDING COMPLETION OF RESIDENCE ITEMS | 12. SURVIVING SPOUSE (if wife, give maiden name) | | 13. SOCIAL SECURITY NUMBER 417-12-1212 | | 14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Working Life, Even If Retired) Businesswoman | | 14b. KIND OF BUSINESS OR INDUSTRY Investments | | Ever in US Armed Forces? No | | |
| | 15a. RESIDENCE - STATE Nevada | | 15b. COUNTY Clark | | 15c. CITY, TOWN OR LOCATION Las Vegas | | 15d. STREET AND NUMBER 1325 Strong Drive | | 15e. INSIDE CITY LIMITS (Specify Yes or No) Yes | | |
| | 16. FATHER - NAME (First Middle Last Suffix) Oscar THRASH | | | | | 17. MOTHER - NAME (First Middle Last Suffix) Cora BLAKE | | | | | |
| | 18a. INFORMANT - NAME (Type or Print) Jacqueline MONTOYA | | | | | 18b. MAILING ADDRESS (Street or R F D No, City or Town, State, Zip) 3385 Maverick Street Las Vegas, Nevada 89108 | | | | | |
| DISPOSITION | 19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) Burial | | 19b. CEMETERY OR CREMATORY - NAME Palm Downtown Cemetery | | 19c. LOCATION City or Town State Las Vegas Nevada 89101 | | | | | | |
| | 20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) BART BURTON SIGNATURE AUTHENTICATED | | 20b. FUNERAL DIRECTOR LICENSE 50 | | 20c. NAME AND ADDRESS OF FACILITY Palm Mortuary-Downtown 1325 North Main Street Las Vegas NV 89101 | | | | | | |
| TRADE CALL | TRADE CALL - NAME AND ADDRESS | | | | | | | | | | |
| CERTIFIER | 21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated (Signature & Title) CHRISTOPHER CRUZ MD SIGNATURE AUTHENTICATED | | | | | 22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated (Signature & Title) | | | | | |
| | 21b. DATE SIGNED (Mo/Day/Yr) May 04, 2009 | | 21c. HOUR OF DEATH 08:47 | | | 22b. DATE SIGNED (Mo/Day/Yr) | | 22c. HOUR OF DEATH | | | |
| | 21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print) | | | | | 22d. PRONOUNCED DEAD (Mo/Day/Yr) | | 22e. PRONOUNCED DEAD AT (Hour) | | | |
| | 23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) CHRISTOPHER CRUZ MD 3650 S Decatur Las Vegas, NV 89103 | | | | | 23b. LICENSE NUMBER 10545 | | | | | |
| REGISTRAR | 24a. REGISTRAR (Signature) NINETTE HARRINGTON SIGNATURE AUTHENTICATED | | 24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) May 05, 2009 | | 24c. DEATH DUE TO COMMUNICABLE DISEASE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> | | | | | | |
| CAUSE OF DEATH | 25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c)) | | | | | | | | | | |
| | PART I | | | | | | | | | | |
| | (a) Pneumonia | | | | | | | | | | |
| | DUE TO, OR AS A CONSEQUENCE OF | | | | | | | | | | |
| (b) Sepsis | | | | | | | | | | | |
| DUE TO, OR AS A CONSEQUENCE OF | | | | | | | | | | | |
| (c) Renal failure | | | | | | | | | | | |
| DUE TO, OR AS A CONSEQUENCE OF | | | | | | | | | | | |
| (d) Respiratory failure | | | | | | | | | | | |
| CONDITIONS IF ANY WHICH GAVE RISE TO IMMEDIATE CAUSE - STATING THE UNDERLYING CAUSE LAST | PART II | | | | | | | | | | |
| | 26. AUTOPSY (Specify Yes or No) No | | | | | | | | | | |
| | 27. WAS CASE REFERRED TO CORONER (Specify Yes or No) No | | | | | | | | | | |
| | 28a. ACC. SUICIDE, HOM. UNDET. OR PENDING INVEST (Specify) | | | | | | | | | | |
| 28b. DATE OF INJURY (Mo/Day/Yr) | | 28c. HOUR OF INJURY | | 28d. DESCRIBE HOW INJURY OCCURRED | | | | | | | |
| 28e. INJURY AT WORK (Specify Yes or No) | | 28f. PLACE OF INJURY - At home, farm, street, factory, office building, etc. (Specify) | | 28g. LOCATION | | STREET OR R F D No | | CITY OR TOWN | | STATE | |

STATE REGISTRAR

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Southern Nevada Health District from State certified documents as authorized by the State Board of Health pursuant to NRS 440.175.

NOT VALID WITHOUT THE RAISED SEAL OF THE SOUTHERN NEVADA HEALTH DISTRICT

Lawrence K. Sands, D.O., M.P.H.

Registrar of Vital Statistics

By:

Date Issued: **MAY 06 2009**

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EXHIBIT I
Handwriting Expert Report Regarding Forged Bank Signature Card

Curtis Baggett
Expert Document Examiner
908 Audelia Road, Suite 200-245, Richardson, Texas 75081
Phone: 972.644.0285 * Fax: 972.644.5233
cbhandwriting@gmail.com
www.ExpertDocumentExaminer.com

Questioned Document Examiner Letter

Subject: Eleanor C. Hartman
Date: December 5, 2013

I have examined three (3) documents with the known signatures of Eleanor C. Hartman. For the purpose of this examination I have labeled these exhibits "K1" through "K3".

Today I have compared signatures of Eleanor C. Hartman on the "K" documents to the Eleanor C. Hartman signature on the questioned document, identified herein as "Q1" to determine if the author of the Eleanor C. Hartman signatures on the "K" documents was the same person who authored the name of Eleanor C. Hartman on the questioned document: An Account application/information form from Wells Fargo Bank dated December 27, 1999 and purportedly signed by Eleanor C. Hartman.

An examination of handwriting includes establishing patterns of writing habits to help identify the author. Handwriting is formed by repeated habits of writing by the author, which are created by neuro-pathways established in the brain. These neuro-pathways control muscular and nerve movement for writing whether the writing is executed by the hand, foot, or mouth.

In support of my opinion, I have included an excerpt from *Handwriting Identification, Facts and Fundamentals* by Roy A. Huber and A.M. Headrick (CRC Press LLC, 1999, pp 50-51) wherein the leading forefathers of document examination in the USA agree that one significant difference in the fundamental structure of a writing compared to another is enough to preclude common authorship:

[Ordway] Hilton stated: "It is a basic axiom of identification in document problems that a limited number of basic differences, even in the face of numerous strong similarities, are controlling and accurately establish nonidentity."

[Wilson R.] Harrison made similar comments: "...the fundamental rule which admits of no exception when handwritings are being compared...is simple -- whatever features two specimens of handwriting may have in common, they cannot be considered to be of common authorship if they display but a single consistent dissimilarity in any feature which is fundamental to the structure of the handwriting, and whose presence is not capable of reasonable explanation."

[James V.P.] Conway expressed the same theme when he wrote: "A series of fundamental agreements in identifying individualities is requisite to the conclusion that two writings were authored by the same person, whereas a single fundamental difference in an identifying individuality between two writings precludes the conclusion that they were executed by the same person."

and finally,

[Albert S.] Osborn and others have generally agreed that despite numerous similarities in two sets of writings, a conclusion of identity cannot be made if there is one or more differences in fundamental features of the writings.

Based upon thorough analysis of these items and from an application of accepted forensic document examination tools, principles and techniques, it is my professional expert opinion that a different person authored the name of Eleanor C. Hartman on the questioned document. Someone did indeed forge the signature of Eleanor C. Hartman on the questioned document, "Q1".

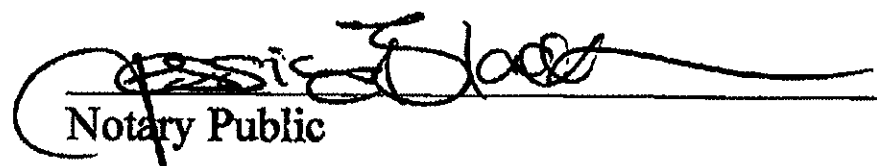
I am willing to testify to this fact in a court of law and I will provide exhibits to the Court showing that I had sufficient data and that my opinion is correct. My Curriculum Vitae is attached and incorporated herein by reference.

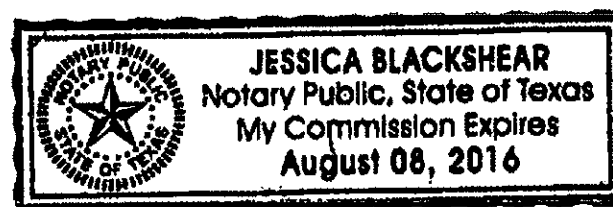
Respectfully submitted,


Curt Baggett

State of Texas §
 §
County of Dallas §

The above Letter of Opinion was sworn to and subscribed before me by Curt Baggett this 5 day of December 2013.


Notary Public



**WELLS
FARGO****Account Application/Information**

Bank name

WELLS FARGO BANK NEVADA, N.A.

LAS VEGAS & CHARLESTON

Account(s) I Want to Open

Bank Use Only

01734 N3416 12/27/1999 10:27 8250

Customer Information

Full name

JACQUELINE M MONTOYA

Street address

6105 ELTON AVE

How long at this address
Yr Mo

8 11

City

State Zip code

Cntry

LAS VEGAS

NV 89107 2537

Taxpayer identification number (TIN)

Home phone

530-82-6094

702/877-6022

Previous street address

How long at this address
Yr Mo

City

State Zip code

Current employer

Business telephone number

BELLAGIO

702/

Current employer's address

How long with employer
Yr Mo

7 11

City

State Zip code

Driver's license or other identification number

Date of birth

DL

366165218965 0701

07/19/1965

Customer Information

Full name

Street address

How long at this address
Yr Mo

City

State Zip code

Cntry

Taxpayer identification number (TIN)

Home phone

Previous street address

How long at this address
Yr Mo

City

State Zip code

Current employer

Business telephone number

Current employer's address

How long with employer
Yr Mo

City

State Zip code

Driver's license or other identification number

Date of birth

My Previous Account (most recent)

Name of financial institution and city

Checking account number

Verification

Complete the section below which applies to you, either Substitute Form W-9 or W-8**Request for Taxpayer Identification Number and Certification (Substitute Form W-9)**

Certification: Under penalties of perjury, I certify that:

1) The number shown on this form is my correct Taxpayer Identification Number, and

2) UNLESS I HAVE CHECKED ONE OF THE BOXES BELOW, I am not subject to backup withholding either because I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the IRS has notified me that I am no longer subject to backup withholding (does not apply to real estate transactions, mortgage interest paid, the acquisition or abandonment of secured property, contributions to an Individual Retirement Arrangement (IRA), and payments other than interest and dividends).

☐ I am subject to backup withholding.☐ I am exempt from backup withholding.

Signature

x *Marjorie T. Connelley***Foreign Status Certificate of Foreign Status (Substitute Form W-8)**

Certification. Under the penalties of perjury, I certify that, I am not a U.S. citizen or resident, or I am an exempt foreign person.

Signature

x *Eleanor Chartman*

QDE EXHIBIT

Q1

OIL & GAS DIVISION ORDER

COPY

TO: Prime Operating Company
2900 Wilcrest Dr., Suite 475
Houston, TX 77042

Date: September 19, 2001

Property Number: 6375
Property Name: Connell Estate #1 #2, #3, #4
Operator: Prime Operating Company
County and State: Upton
Property Description: Section 33, Block 39, T&P Railway Company Survey, Upton County, Texas, containing 640 acres, more or less, from the surface of the ground down to a depth of 9,150 feet.

Effective Date: First Sales

| Owner # | Interest Type | Name & Address | Decimal Interest |
|---------|---------------|--|------------------|
| 7635 | Royalty | Marjorie T. Connell & Eleanor M. Hartman, Trustees P. O. Box 710 Las Vegas NV 89125 | 0.046392050 |

The undersigned certifies the ownership of their decimal interest in production or proceeds as described above payable by Prime Operating Company:

Prime Operating Company shall be notified, in writing, of any change in ownership, decimal interest, or payment address. All such changes shall be effective the first day of the month following receipt of such notice.

Prime Operating Company is authorized to withhold payment pending resolution of a title dispute or adverse claim asserted regarding the interest in production claimed herein by the undersigned. The undersigned agrees to indemnify and reimburse Payor any amount attributable to an interest to which the undersigned is not entitled.

Prime Operating Company may accrue proceeds until the total amount equals \$25.00, or pay annually, whichever occurs first, or as required by applicable state statute.

This Division Order does not amend any lease or operating agreement between the undersigned and the lessee or operator or any other contracts for the purchase of oil or gas.

In addition to the terms and conditions of this Division Order, the undersigned and Prime Operating Company may have certain statutory rights under the laws of the state in which the property is located.

Special Clauses: **COMPLETE** and **RETURN THE ATTACHED W-9 FORM**

Owner Signature:

Marjorie T. Connell Trustee
Eleanor C. Hartman Trustee

Owner Tax I.D. Number:

88-6037238

Owner Daytime Telephone #:

(702) 878-8698

Owner Fax #:

Failure to furnish your Social Security / Tax I.D. number will result in a 31 percent withholding tax in accordance with federal law, and any tax withheld will not be refundable by Payor.

QDE EXHIBIT

KI

AA 0534

1980

SUBSTITUTION OF TRUSTES

1 MARJORIE T. CONNELL, surviving Trustee of the W. N.
2 CONNELL AND MARJORIE T. CONNELL LIVING TRUST, made and en-
3 tered into on May 18, 1972, by and between W. N. CONNELL
4 and MARJORIE T. CONNELL, as Grantors, and W. N. CONNELL and
5 MARJORIE T. CONNELL, as Trustees, hereby substitutes and
6 appoints ELEANOR MARGUERITE CONNELL HARTMAN, daughter of
7 W. N. CONNELL, as Co-Trustee of the separate property of
8 W. N. CONNELL presently held in the above-entitled Trust.
9 This substitution is made pursuant to the terms of said Trust,
10 due to the decease of W. N. CONNELL, who passed away Novem-
11 ber 24, 1979.

12
13 *Marjorie T. Connell*
14 MARJORIE T. CONNELL

15 The undersigned, ELEANOR MARGUERITE CONNELL HARTMAN, also
16 known as ELEANOR C. HARTMAN, hereby consents to serve as Co-
17 Trustee of the separate property of W. N. CONNELL in the above-
18 entitled Trust.

19 Dated this 6th day of May, 1980.

20
21 *Eleanor Marguerite Connell Hartman*
22 ELEANOR MARGUERITE CONNELL HARTMAN
23 *Eleanor C. Hartman*

24 STATE OF NEVADA)
25) ss
26 COUNTY OF CLARK)

27 On this 6th day of May, 1980, before me,
28 undersigned a Notary Public in and for the State of Nevada,

QDE EXHIBIT

K2

DIVISION ORDER

TO: LPC Crude Oil, Inc.
P. O. Box 3821
Midland, Texas 79702

Lease No. TX1028700

Effective Date: June 1, 2006

The undersigned severally and not jointly certifies it is the legal owner of the interest set out below of all the oil produced from the CONNELL A well in UPTON, County TX, operated by MOMENTUM ENERGY CORPORATION, described as:

E/2 NE/4 SEC 36 BLK 39 T-5-S T&P RR CO SURVEY

From the effective date and until further written notice, and subject to the following provisions, you, or your designated agent, are authorized to receive such production and for the proceeds from the sale of oil in accordance with the division of interest set forth below. (The contents of the reverse side shall constitute a part of this division order.)

| Owner No. | Lease No. | Interest | Type |
|-----------|-----------|------------|------|
| 1003988 | TX1028700 | 0.02050780 | RI |

Credit To/Name and Address

MARJORIE T CONNELL & EC
P O BOX 710
LAS VEGAS NV 89125-0710

SIGNATURE OF
WITNESS/ATTEST:

Linda Vargas

SIGNATURE OF OWNER:

Marjorie T Connell Trustee
BY: *Eleanor Connell Harlan & Co*

NAME: _____

TITLE: _____

YOUR TAX ID# *88-6037338*

OWNER'S REMITTANCE ADDRESS:

QDE EXHIBIT

K3

AA 0536

Curtis Baggett
Expert Document Examiner
908 Audelia Road, Suite 200-245, Richardson, Texas 75081
Phone: 972.644.0285 * Fax: 972.644.5233
cbhandwriting@gmail.com
www.ExpertDocumentExaminer.com

Questioned Document Examiner Letter

Subject: Jacqueline Montoya

Date: December 12, 2013

I have examined seven (7) documents with the known signatures of Jacqueline Montoya. For the purpose of this examination I have labeled these exhibits "K1" through "K7".

Today I have compared signatures of Jacqueline Montoya on the "K" documents to the Jacqueline Montoya signature on the questioned document, identified herein as "Q1" to determine if the author of the Jacqueline Montoya signatures on the "K" documents was the same person who authored the name of Jacqueline Montoya on the questioned document: An account application/information form from Wells Fargo Bank dated December 27, 1999 and purportedly signed by Jacqueline Montoya.

An examination of handwriting includes establishing patterns of writing habits to help identify the author. Handwriting is formed by repeated habits of writing by the author, which are created by neuro-pathways established in the brain. These neuro-pathways control muscular and nerve movement for writing whether the writing is executed by the hand, foot, or mouth.

In support of my opinion, I have included an excerpt from *Handwriting Identification, Facts and Fundamentals* by Roy A. Huber and A.M. Headrick (CRC Press LLC, 1999, pp 50-51) wherein the leading forefathers of document examination in the USA agree that one significant difference in the fundamental structure of a writing compared to another is enough to preclude common authorship:

[Ordway] Hilton stated: "It is a basic axiom of identification in document problems that a limited number of basic differences, even in the face of numerous strong similarities, are controlling and accurately establish nonidentity."

[Wilson R.] Harrison made similar comments: "...the fundamental rule which admits of no exception when handwritings are being compared...is simple -- whatever features two specimens of handwriting may have in common, they cannot be considered to be of common authorship if they display but a single consistent dissimilarity in any feature which is fundamental to the structure of the handwriting, and whose presence is not capable of reasonable explanation."

[James V.P.] Conway expressed the same theme when he wrote: "A series of fundamental agreements in identifying individualities is requisite to the conclusion that two writings were authored by the same person, whereas a single fundamental difference in an identifying individuality between two writings precludes the conclusion that they were executed by the same person."

and finally,

[Albert S.] Osborn and others have generally agreed that despite numerous similarities in two sets of writings, a conclusion of identity cannot be made if there is one or more differences in fundamental features of the writings.

Based upon thorough analysis of these items and from an application of accepted forensic document examination tools, principles and techniques, it is my professional expert opinion that the same person authored the name of Jacqueline Montoya on the questioned document. Jacqueline Montoya did indeed sign her own name on the questioned document, "Q1".

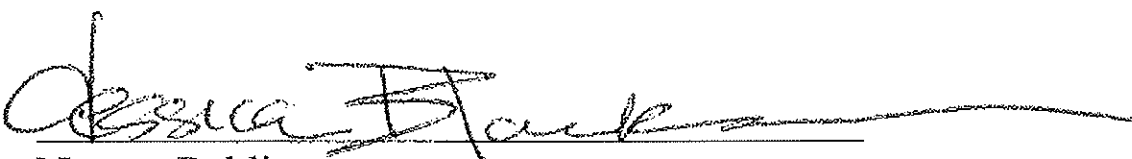
I am willing to testify to this fact in a court of law and I will provide exhibits to the Court showing that I had sufficient data and that my opinion is correct. My Curriculum Vitae is attached and incorporated herein by reference.

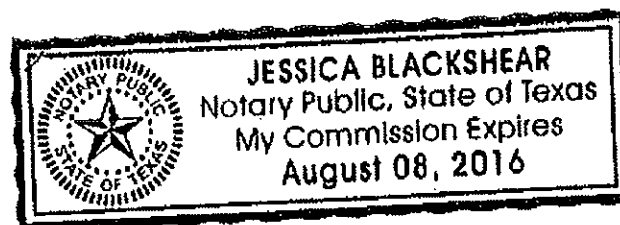
Respectfully submitted,


Curt Baggett

State of Texas §
 §
County of Dallas §

The above Letter of Opinion was sworn to and subscribed before me by Curt Baggett this 12 day of December 2013.


Notary Public



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EXHIBIT J
Demand Letters of Texas Legal Counsel of Jacqueline M. Montoya to surface tenant
and oil companies

STUBBEMAN, McRAE, SEALY, LAUGHLIN & BROWDER, INC.
ATTORNEYS AT LAW

FASCHEN CENTER - TOWER TWO
550 WEST TEXAS AVENUE, SUITE 800
MIDLAND, TEXAS 79701
432.682.1616
FACSIMILE 432.682.8584
www.stubbemanlawfirm.com

SEAN GUERRERO
Direct Dial 432.682.0242
ALSO LICENSED IN NEW MEXICO
sguerrero@stubbemanlawfirm.com

September 30, 2013

Via facsimile (713) 296-6454
and CMRRR#7003 3110 0002 5180 6829
Apache Corporation
Attn: Division Order Dept.
2000 Post Oak Blvd, Suite 100
Houston, Texas 77056

Re: William and Marjorie Connell Living Trust, Marjorie Connell and Eleanor
Hartman, Co Trustees

Owner Numbers: 47052
45572

To Whom It May Concern:

I write on behalf of our client, Jaqueline M. Montoya, individually and in her capacity as trustee of the MCT Living Trust, Plaintiff in Cause No. P-09-066425-T; *In the Matter of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972*. The lawsuit referenced concerns oil and gas royalty and interest payments into the W. N. Connell and Marjorie T. Connell Living Trust, Eleanor Ahern, Trustee. I enclose a copy of the filed petition and confirmation of filing for your reference. We will follow up with a file-marked copy of the petition once we have received it.

Due to the dispute regarding the distribution of payments, a portion of which has been made by your company, we request that Apache Corporation hold in suspense all payments to the W. N. Connell and Marjorie T. Connell Living Trust until this lawsuit has been resolved. We request that you take action immediately so that no further payments are distributed until this suit is resolved. Please let me know if you have any questions. We appreciate your cooperation and look forward to working with you.

Very truly yours,


Sean Guerrero

*13 OCT 3 PM 4:46

SMG:mg
Enclosures



STUBBEMAN, McRAE, SEALY, LAUGHLIN & BROWDER, INC.

ATTORNEYS AT LAW

FASKEN CENTER • TOWER TWO
550 WEST TEXAS AVENUE, SUITE 800
MIDLAND, TEXAS 79701
432.682.1616
FACSIMILE 432.682.4884
www.stubbemanlawfirm.com

SEAN GUERRERO
Direct Dial: 432.688.0212
ALSO LICENSED IN NEW MEXICO
sguerrero@stubbemanlawfirm.com

September 30, 2013

Via facsimile (713)646-4571
and CMRRR#7003 3110 0002 5180 6836

Plains Marketing, L.P.

Attn: Division Orders Dept.

P.O. Box 4648

Houston, Texas 77210

Re: William and Marjorie Connell Living Trust, Marjorie Connell and Eleanor
Hartman, Co Trustees

Owner Numbers: 0782216
0488845

To Whom It May Concern:

I write on behalf of our client, Jaqueline M. Montoya, individually and in her capacity as trustee of the MCT Living Trust, Plaintiff in Cause No. P-09-066425-1; *In the Matter of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972*. The lawsuit referenced concerns oil and gas royalty and interest payments into the W. N. Connell and Marjorie T. Connell Living Trust, Eleanor Ahern, Trustee. I enclose a copy of the filed petition and confirmation of filing for your reference. We will follow up with a file-marked copy of the petition once we have received it.

Due to the dispute regarding the distribution of payments, a portion of which has been made by your company, we request that Plains Marketing hold in suspense all payments to the W. N. Connell and Marjorie T. Connell Living Trust until this lawsuit has been resolved. We request that you take action immediately so that no further payments are distributed until this suit is resolved. Please let me know if you have any questions. We appreciate your cooperation and look forward to working with you.

Very truly yours,


Sean Guerrero

SMG:mg
Enclosure

STUBBEMAN, McRAE, SEALY, LAUGHLIN & BROWDER, INC.

ATTORNEYS AT LAW

FASKEN CENTER • TOWER TWO
550 WEST TEXAS AVENUE, SUITE 800
MIDLAND, TEXAS 79701
432.682.1616
FACSIMILE 432.682.4884
www.stubbemanlawfirm.com

SEAN GUERRERO
Direct Dial: 432.688.0242
ALSO LICENSED IN NEW MEXICO
sguerrero@stubbemanlawfirm.com

September 30, 2013

Via facsimile (432) 682-4929
and CMRRR#7003 3110 0002 5180 6843

Drag A Cattle Company, LLC
c/o James Walton
414 W. Texas, Suite 310
Midland, Texas 79702

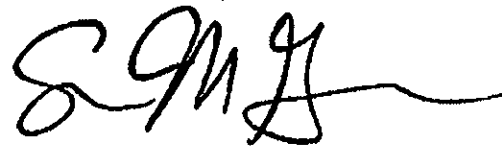
Re: W.N. and M.T. Connell Living Trust, M. Connell and E. Hartman, Trustees

To Whom It May Concern:

I write on behalf of our client, Jaqueline M. Montoya, individually and in her capacity as trustee of the MCT Living Trust, Plaintiff in *Cause No. P-09-066425-T; In the Matter of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972*. The lawsuit referenced concerns oil and gas royalty and interest payments into the W. N. Connell and Marjorie T. Connell Living Trust, Eleanor Ahern, Trustee. I enclose a copy of the filed petition and confirmation of filing for your reference. We will follow up with a file-marked copy of the petition once we have received it.

Due to the dispute regarding the distribution of payments, a portion of which has been made by your company, we request that Drag A Cattle Company hold in suspense all payments to the W. N. Connell and Marjorie T. Connell Living Trust until this lawsuit has been resolved. We request that you take action immediately so that no further payments are distributed until this suit is resolved. Please let me know if you have any questions. We appreciate your cooperation and look forward to working with you.

Very truly yours,



Sean Guerrero

SMG:mg
Enclosures

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EXHIBIT K
Application For Original Probate Of Foreign Will And Issuance Of Letters Of
Independent Administration of Jacqueline M. Montoya in the Estate Of Marjorie T.
Connell, Deceased, in the County Court of Upton County, Texas, No. 1207-U1836-
PRO

112th-12-07-44237-OTH
No. 12-07-41836-PRD

ESTATE OF

MARJORIE T. CONNELL,

DECEASED

§
§
§
§
§

IN THE COUNTY COURT OF

UPTON COUNTY, TEXAS

**APPLICATION FOR ORIGINAL PROBATE OF FOREIGN WILL
AND ISSUANCE OF LETTERS OF INDEPENDENT ADMINISTRATION**

TO THE HONORABLE JUDGE OF SAID COURT:

Jacqueline Montoya, the same person as **Jacqueline Marguerite Montoya** ("Applicant") furnishes the following information to the Court for the original probate of the written Will of **Marjorie T. Connell** ("Decedent"), a domiciliary of the State of Nevada, and for issuance of Letters Testamentary under Section 103 of the Texas Probate Code.

Section 103 provides that the original probate of a will of a testator who died domiciled outside of the State of Texas which, upon probate, may operate upon any property in this State, and which is valid under the laws of this State, may be granted in the same manner as the probate of other wills is granted under this Code, if the will does not stand rejected from probate in the jurisdiction where the testator died domiciled.

1. **Jacqueline Montoya** is a granddaughter of the Decedent and an individual interested in this estate whose residence address is 3385 Maverick St., Las Vegas, Nevada 89108.

2. **Marjorie T. Connell** died May 1, 2009, at the age of 91 years. Four years have not elapsed since the date of her death. She was domiciled in the State of Nevada, her residence address being 1325 Strong Dr., Las Vegas, Nevada.

3. Decedent owned oil, gas and mineral interests located in Upton County, Texas, of a probable value in excess of \$100,000.00.

4. This Court has jurisdiction of this proceeding because the Decedent owned property in Texas upon which her Will may operate, and it has venue because the principal property is located in Upton County, Texas.

5. To Applicant's knowledge, Decedent was married one time only, such marriage being to **W. N. Connell**, who predeceased her. She was not divorced after the making of her Will. No child was ever born to or adopted by the Decedent.

6. Decedent left a written Will dated January 7, 2008, duly executed according to the laws of the State of Nevada, which was never revoked. The original Will was lodged

H:\DOCS\MLC\MontoyaAppPro.wpd

7/12/2012 FILED AT 2:55
LAWANDA McMURRAY
CLERK, COUNTY/DISTRICT COURT
UPTON COUNTY, TEXAS
DEPUTY

with the Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark. An exemplified copy of the Will is filed herein.

7. The subscribing witnesses to the Will are Sharon A. Brown, whose present address is unknown, and Josefina C. Jones, whose present address is 900 Rancho Lane, Las Vegas, Nevada 89106. The Will is not self-proved according to Texas law, but will be proved by the sworn deposition on written questions of Josefina C. Jones.

8. Decedent's Will has never been offered for probate in the State of Nevada where she was domiciled and does not stand rejected for probate in that state.

9. Decedent's Will names Jacqueline Marguerite Montoya, Applicant herein, as personal representative of her estate, and provides that no bond shall be required of her.

10. Decedent's Will was prepared in accordance with the laws of the State of Nevada and does not provide for independent administration of her estate in accordance with Texas law.

11. Decedent's Will provides that her probate estate shall be distributed to the then acting Trustee of the MTC Living Trust dated December 6, 1995, as restated on January 7, 2008.

12. In Article Four of Decedent's Will, she exercised a Power of Appointment granted in the W. N. Connell and Marjorie T. Connell Living Trust dated May 18, 1971, Article Fifth, Trust No. 3, Paragraph B(2), by which she appointed the entire principal and undistributed income in Trust No. 3 to Jacqueline Montoya and Kathryn Anne Bouvier, to be distributed in trust in accordance with the provisions of the MTC Living Trust dated December 6, 1995, as restated on January 7, 2008. The oil, gas and mineral interests located in Upton County, Texas, comprise a portion of the principal and undistributed income of Trust No. 3.

13. Jacqueline Montoya and her sister, Kathryn Anne Bouvier, are the distributees of Trust No. 3 and the residuary distributees of the MTC Living Trust, which includes the Upton County property. Jacqueline Montoya is the current trustee of the MTC Living Trust, and Kathryn Anne Bouvier is the successor trustee. As the distributees, Jacqueline Montoya and Kathryn Anne Bouvier agree to independent administration of Decedent's Estate. Kathryn Anne Bouvier further agrees to the appointment of Jacqueline Montoya as Independent Administrator of the estate.

14. Applicant is willing to accept the trust and qualify and is not disqualified by law from accepting Letters of Independent Administration, and she is entitled to such Letters. Because Applicant is a resident of the State of Nevada, she will appoint Mary Lou Cassidy, of Stubbeman, McRae, Sealy, Laughlin & Browder, Inc., Midland, Texas, as resident agent for service of process in the State of Texas.

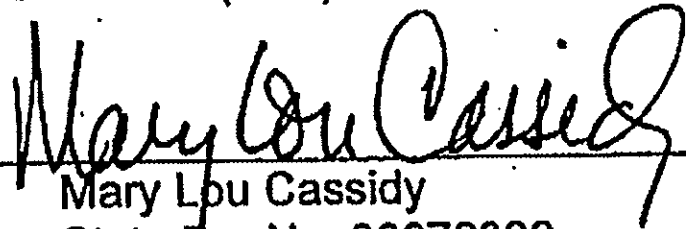
15. Decedent's Will does not name the State of Texas, a governmental agency of Texas, or a charitable organization as a devisee.

16. It is represented to the Court that there is no need for the appointment of appraisers.

WHEREFORE, Applicant prays that citation issue as required by law to all persons interested in this estate; that the Will of Marjorie T. Connell be admitted to probate; that Applicant be appointed Independent Administrator of the estate to serve without bond; that Letters of Independent Administration be issued to Applicant upon qualification; and that all other orders be entered as the Court may deem proper.

Respectfully submitted,

STUBBEMAN, McRAE, SEALY,
LAUGHLIN & BROWDER, INC.
550 West Texas, Suite 800
Midland, Texas 79702
432-682-1616
432-682-4884 (FAX)

By: 
Mary Lou Cassidy
State Bar No. 03979300

ATTORNEYS FOR APPLICANT

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EXHIBIT L
Decree of Adoption

FILED

NOV 24 9 13 AM '76

CORRETTA CONNELL
CLERK
THOMASINE MOORE

EXHIBIT

"A"

CASE NO. 8044

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

In the Matter of the Adoption of
ELEANOR C. HARTMAN,

an Adult

DECREE OF ADOPTION

MARJORIE T. CONNELL and ELEANOR C. HARTMAN having presented their petition for approval of their adoption declaring that ELEANOR C. HARTMAN, an adult, is the child of Petitioner MARJORIE T. CONNELL; and said matter coming on regularly to be heard before the above-entitled Court, there appeared before the Court the Petitioners who were examined by the Court, from which examination it is found that MARJORIE T. CONNELL is the stepmother and is more than twenty years older than ELEANOR C. HARTMAN; that both Petitioners are residents of the County of Clark, State of Nevada; that both Petitioners are married; that the respective spouses of Petitioners have given their consents to the adoption of ELEANOR C. HARTMAN by MARJORIE T. CONNELL;

The Court being satisfied that the best interests of the Petitioners will be promoted by the proposed adoption, hereby grants the Petition and it is therefore

ORDERED, ADJUDGED AND DECREED that the said adoption agreement is approved and that said ELEANOR C. HARTMAN, an adult, do, and she hereby is, declared adopted by Petitioner MARJORIE T. CONNELL, and shall henceforth be regarded and treated in all respects as her child and have all the rights and be

1 subject to all the duties of that relation.

2 DATED this 24 day of November, 1970.

3

4

JOSEPH S. PAVLIKOWSKI
DISTRICT JUDGE

5

6 TOY B. GREGORY, JR.,
A Professional Corporation

7

8 By TOY B. GREGORY, JR.
Attorney for Petitioners
1828 East Charleston Boulevard
Las Vegas, Nevada

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LAW OFFICES
TOY B. GREGORY, JR.
ATTORNEY AT LAW
1828 E. CHARLESTON BLVD.
LAS VEGAS, NV 89101

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EXHIBIT M
Petition In Intervention And Motion To Set Aside “Order Probating Foreign Will
And Appointing Independent Administrator” Of Eleanor Ahern in the Estate Of
Marjorie T. Connell, Deceased, in the County Court of Upton County, Texas, No.
1207-U1836-PRO

CAUSE NO. 12-07-U4237-OTH

| | | |
|----------------------|---|-----------------------------------|
| ESTATE OF | § | IN THE 112 TH JUDICIAL |
| | § | |
| MARJORIE T. CONNELL, | § | DISTRICT COURT OF |
| | § | |
| DECEASED | § | UPTON COUNTY, TEXAS |

PETITION IN INTERVENTION AND MOTION TO
SET ASIDE "ORDER PROBATING FOREIGN WILL AND
APPOINTING INDEPENDENT ADMINISTRATOR"

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Intervenor Eleanor Ahern, f/k/a Eleanor Marguerite Connell Hartman, in her capacity as Trustee of The W.N. Connell and Marjorie T. Connell Living Trust, under the Trust Agreement dated May 18, 1972, including Trust No. 2 created under such trust agreement, and files this Petition In Intervention and Motion to Set Aside the "Order Probating Foreign Will and Appointing Independent Administrator" entered by this Court on or about August 7, 2012 for lack of subject matter jurisdiction, respectfully showing as follows:

I.

Intervenor is an individual who is the successor Trustee of The W.N. Connell and Marjorie T. Connell Living Trust, under the Trust Agreement dated May 18, 1972, and is the daughter and only surviving child of Marjorie T. Connell, Deceased. Intervenor's daughter Jacqueline Montoya has already appeared in this litigation and may be served by service upon her Texas resident agent, Ms. Mary Lou Cassidy, of Stubbeman, McRae, Sealy, Laughlin & Browder, Inc., 550 West Texas, Suite 800, Midland, Texas 79701. Intervenor's daughter Kathryn Anne Bouvier has waived issuance of service and citation and entered her appearance in this matter, and may be served by mail

1

FILED
7-12-2013 AT 1:28 PM
LEON J. GRAY
CLERK, COURT
UPTON COUNTY, TEXAS
[Signature]

addressed to Ms. Kathryn A. Bouvier, 8461 Purple Sage Road, Middleton, Idaho 83644.

II.

Intervenor Eleanor Ahern, in her capacity as Trustee of The W.N. Connell and Marjorie T. Connell Living Trust, under the Trust Agreement dated May 18, 1972, including Trust No. 2, has a justiciable interest in this matter because the Trust holds legal title to certain surface interests and oil and gas interests in Upton County, Texas, which Intervenor has a fiduciary duty to administer, and the "Application for Original Probate of Foreign Will and Issuance of Letters of Independent Administration" filed by Applicant Jacqueline Montoya on July 7, 2012, and the subsequent "Order Probating Foreign Will and Appointing Independent Administrator" entered by this Court on August 7, 2012, cloud title to the trust assets that Intervenor has a responsibility to administer. Moreover, the Order signed by this Court on August 7, 2012 admitting the foreign will of Marjorie T. Connell, Deceased to probate in Texas is void for lack of subject matter jurisdiction, and must be set aside for this reason.

III.

This Petition in Intervention is timely filed. Intervenor was not personally served with process in this proceeding and has never entered an appearance in this cause, and only recently learned that an application to probate her mother's will had been filed in Texas. At that time, Intervenor was shocked to discover that this Court had been told by Applicant Jacqueline Montoya that: "No child was ever born to or adopted by . . ." Marjorie T. Connell. (Paragraph 5, page 1, "Application for Original Probate of Foreign Will and Issuance of Letters of Independent Administration.") Intervenor is the adopted daughter of Marjorie T. Connell, and a copy of the decree of adoption dated November 24, 1976 is attached to this Petition as Exhibit "A."

IV.

The “Application for Original Probate of Foreign Will and Issuance of Letters of Independent Administration” filed by Applicant Jacqueline Montoya on July 7, 2012, alleges that this Court has jurisdiction to admit the foreign will of Marjorie T. Connell to probate in Texas, although Marjorie T. Connell was domiciled in Nevada, because “. . . the Decedent owned property in Texas upon which her Will may operate . . .” and “. . . Decedent owned oil, gas and mineral interests located in Upton County, Texas, of a probable value in excess of \$100,000.00.” Petitioner would show that Decedent Marjorie T. Connell individually owned no surface interests or oil, gas and mineral interests in Upton County, Texas, at any time prior to her death, and that all such Upton County properties were the separate property of her husband, W.N. Connell, and were conveyed to The W.N. Connell and Marjorie T. Connell Living Trust, under the Trust Agreement dated May 18, 1972. Copies of the relevant deeds are attached to this Petition as Exhibit “B.” Further, no Upton County real property has ever been conveyed to the Trustee or Trustees of Trust No. 3, which is the only trust affected by the foreign will of Marjorie T. Connell now erroneously admitted to probate by this Court. Because Decedent Marjorie T. Connell never owned oil and gas interests or any other real property interests in Upton County, and because the power of appointment exercised by her will did not affect title to oil and gas interests or other real property in Upton County, Texas, this Court has no subject matter probate jurisdiction over the probate of the foreign will of Marjorie T. Connell, Deceased.

V.

Lack of subject matter jurisdiction renders a judgment or order void, rather than merely voidable, and such a judgment or order may be challenged either directly or collaterally. Subject matter jurisdiction is never presumed to exist, and lack of subject matter jurisdiction cannot be

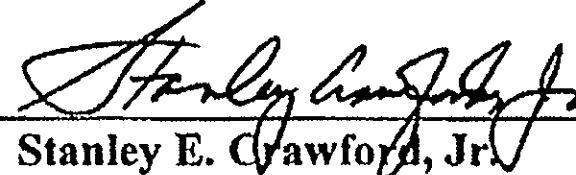
waived. When a trial court lacks subject matter jurisdiction, it has no discretion and must dismiss the case that has been filed as a ministerial act.

WHEREFORE, PREMISES CONSIDERED, Intervenor respectfully prays that this Court vacate its "Order Probating Foreign Will and Appointing Independent Administrator," and dismiss this litigation for lack of subject matter jurisdiction.

Respectfully submitted,

JOHNSTON & ASSOCIATES, P.C.
400 W. Illinois, Suite 1600
Midland, Texas 79701
P. O. Box 2890
Midland, Texas 79702-2890
(432) 683-8844
(432) 683-8855 - Fax

BY:



Stanley E. Crawford, Jr.
State Bar No. 05040500
Jeffrey M. Johnston
State Bar No. 10838480

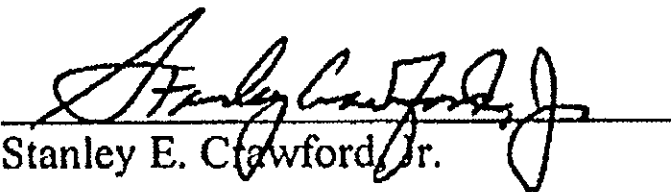
**ATTORNEYS FOR INTERVENOR,
ELEANOR AHERN F/K/A ELEANOR
MARGUERITE CONNELL HARTMAN**

CERTIFICATE OF SERVICE

I hereby certify that on this the ____ day of July, 2013, I complied with TEX. R. CIV. P. 21 and 21a by mailing a copy of the above and foregoing instrument by certified mail, return receipt requested, to:

Ms. Jacqueline Montoya
c/o Ms. Mary Lou Cassidy
STUBBEMAN, MCRAE, SEALY, LAUGHLIN & BROWDER, INC.
550 West Texas, Suite 800
Midland, Texas 79701

Ms. Kathryn Anne Bouvier
8461 Purple Sage Road
Middleton, Idaho 83644


Stanley E. Crawford, Jr.

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EXHIBIT N
Supplemental Motion To Dismiss For Lack Of Jurisdiction of Eleanor Ahern in the
Estate Of Marjorie T. Connell, Deceased, in the County Court of Upton County,
Texas, No. 1207-U1836-PRO

CAUSE NO. 12-07-U4237-OTH

| | | |
|----------------------|---|-----------------------------------|
| ESTATE OF | § | IN THE 112 TH JUDICIAL |
| MARJORIE T. CONNELL, | § | DISTRICT COURT OF |
| DECEASED | § | UPTON COUNTY, TEXAS |

SUPPLEMENTAL MOTION TO DISMISS
FOR LACK OF JURISDICTION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Eleanor Ahern, in her capacity as Successor Trustee of The W.N. Connell and Marjorie T. Connell Living Trust, under the Trust Agreement dated May 18, 1972, and files and serves this Supplemental Motion to Dismiss for Lack of Jurisdiction, respectfully showing as follows:

I.

This motion is filed in supplementation of the previous motion filed by this Movant to dismiss and/or vacate the "Order Probating Foreign Will and Appointing Independent Administrator" entered by this Court on or about August 7, 2012, for the additional reason that the record of these proceedings affirmatively shows that the only citation issued and served in this cause was issued in connection with the "Notice of Intention to Take the Deposition of Josefina C. Jones," and no citation that complied with Section 128 of the Texas Probate Code was ever issued or served in this proceeding.

II.

According to the Court's file in this cause, Jacqueline Montoya's "Application for Original

Probate of Foreign Will and Issuance of Letters of Independent Administration” was filed on July 12, 2012 at 2:55 p.m. Also on July 12, 2012 at 2:55 p.m., counsel for Applicant Jacqueline Montoya filed a “Notice of Intention to Take Deposition on Written Questions” of Josefina C. Jones, residing in Las Vegas, Nevada. A citation to serve the deposition notice was issued on July 12, 2012 at 3:15 p.m., and according to the sheriff’s return, was executed by posting on July 12, 2012 at 3:14 p.m. No citation was issued or is in the file that gives notice that an application for probate has been filed, the name of the applicant seeking to probate the will, the time when the application will be acted upon, or notifying all persons interested in the probate that they might appear at that time to contest the application, as required by Section 128 of the Texas Probate Code. Nor is there any sheriff’s return in the file reflecting service of any citation issued with respect to the probate application itself.

III.

Section 88 of the Texas Probate Code requires that an applicant seeking to probate a will in Texas must prove that citation has been served and returned in the manner and for the length of time required by the Code. Absent proof of issuance and service of citation substantially in compliance with the statute, no court may act upon any application for the probate of a will. *Marrs v. Marquis*, 927 S.W.2d 304, 306 (Tex. App. – El Paso 1996, no writ); *Watson v. Dingler*, 831 S.W.2d 834, 839 (Tex. App. – Houston [14th Dist.] 1992, writ denied); *Williams v. White*, 105 S.W.2d 1105, 1106 (Tex. App. – Waco 1937, no writ). Even a defect as slight as failing to specify the name of the county where citation is to be posted renders any judgment admitting the will to probate void. *Green v. White*, 32 S.W.2d 488, 489-90 (Tex. Civ. App. – Waco 1930, no writ).

IV.

Applicant Jacqueline Montoya completely failed to issue and serve citation with respect to her application to admit the foreign will of Marjorie T. Connell to probate in Texas. Accordingly,

the Court's August 7, 2012 "Order Probating Foreign Will and Appointing Independent Administrator" is void and must be dismissed and/or vacated and set aside.

WHEREFORE, PREMISES CONSIDERED, Eleanor Ahern, in her capacity as Successor Trustee of the 1972 Living Trust of William N. Connell and Marjorie Connell, requests this Court to vacate its August 7, 2012 order admitting the will of Marjorie Connell to probate in Texas because this Court had no jurisdiction to enter that order, both because Decedent Marjorie Connell did not own oil and gas interests in Upton County upon which her will might have operated, and because citation was not served and returned as required by Sections 88 and 128 of the Texas Probate Code.

Respectfully submitted,

JOHNSTON & ASSOCIATES, P.C.
400 W. Illinois, Suite 1600
Midland, Texas 79701
P. O. Box 2890
Midland, Texas 79702-2890
(432) 683-8844
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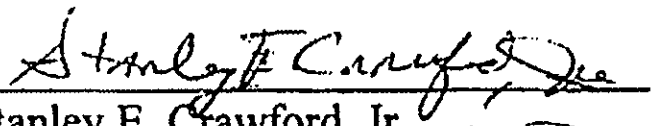

BY: *Stanley E. Crawford, Jr.*
Stanley E. Crawford, Jr.
State Bar No. 05040500
Jeffrey M. Johnston
State Bar No. 10838480

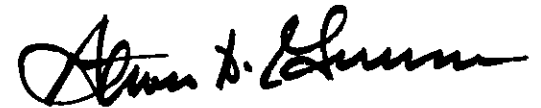
**ATTORNEYS FOR INTERVENOR,
ELEANOR AHERN F/K/A ELEANOR
MARGUERITE CONNELL HARTMAN**

CERTIFICATE OF SERVICE

I hereby certify that on this the 3 day of October, 2013, I complied with TEX. R. CIV. P. 21 and 21a by mailing a copy of the above and foregoing instrument by certified mail, return receipt requested, to:

Ms. Mary Lou Cassidy
Mr. Sean Guerrero
STUBBEMAN, MCRAE, SEALY, LAUGHLIN & BROWDER, INC.
550 West Texas, Suite 800
Midland, Texas 79701


Stanley E. Crawford, Jr. 



CLERK OF THE COURT

RSPN
THE RUSHFORTH FIRM, LTD.
JOSEPH J. POWELL
State Bar No. 8875
P. O. Box 371655
Las Vegas, NV 89137-1655
Telephone (702) 255-4552
fax: (702) 255-4677
e-mail: probate@rushforthfirm.com
Attorneys for Jacqueline M. Montoya

DISTRICT COURT
CLARK COUNTY, NEVADA

In re the Matter of the

THE W.N. CONNELL and MARJORIE
T. CONNELL LIVING TRUST, dated
May 18, 1972

A non-testamentary trust.

Case No.: P-09-066425-T
Department: 26 (Probate)
Before Honorable Judge Gloria
Sturman

**RESPONSE TO OBJECTION OF TRUSTEE ELEANOR C. AHERN TO JACQUELINE M.
MONTTOYA'S PETITION TO COMPEL TRUSTEE TO DISTRIBUTE ACCRUED INCOME AND
FUTURE INCOME RECEIVED FROM OIL, GAS, AND MINERALS AND DECLARATION OF
THE APPLICABILITY OF THE DOCTRINE OF LACHES**

Date of Hearing: January 14, 2013
Time of Hearing: 9:00 a. m.

JACQUELINE M. MONTTOYA ("Jacqueline"), as both an individual and also in her capacity as the trustee of the "MTC Living Trust" dated December 6, 1995, by and through her counsel of record, JOSEPH J. POWELL, Esq., of THE RUSHFORTH FIRM, LTD., hereby respectfully Responds to the "Objection of Trustee Eleanor C. Ahern to Jacqueline

1 M. Montoya's Petition to Compel Trustee to Distribute Accrued Income and Future Income
2 Received From Oil, Gas, and Minerals and Declaration of the Applicability of the Doctrine
3 of Laches" ("Objection"), which has been filed by ELEANOR C. AHERN, also known as
4 Eleanor Marguerite Connell Hartman, in her capacity as the trustee of "The W.N. Connell
5 and Marjorie T. Connell Living Trust" ("Trust"), dated May 18, 1972, by and through her
6 counsel of record, JOHN R. MUGAN, Esq. and MICHAEL D. LUM, of the law firm of
7 JEFFREY BURR, LTD., on or about January 3, 2014. Jacqueline respectfully responds to
8 the Objection as follows:
9

10 **A. OVERVIEW**

11
12 If Ms. Ahern's Objection is being understood properly, Ms. Ahern is declaring that
13 she has felt from the time of her father's passing in 1979 to the present, now approximately
14 34 years, that she has been entitled to 100% of all of the income generated from all of the
15 oil, gas, and mineral leases related to the Texas property, but allowed others to receive 65%
16 of the proceeds and only took 35% with the thought that she could change this whenever
17 she felt like it, despite the reliance and pattern that occurred for nearly 34 years. Despite
18 her own property statement for purposes of divorce in which Ms. Ahern affirmatively
19 declared that she was entitled to only 35% of the proceeds, not 100%, Ms. Ahern declares
20 that at no time was Marjorie Connell, nor the beneficiaries of her Trust (the "MTC Living
21 Trust"), Jacqueline and her sister Kathryn, ever legally entitled to a red cent of those
22 income proceeds. Despite consulting with an attorney on the matter to understand her
23 rights under the Trust, Ms. Ahern intentionally chose to keep quiet and sleep on her rights
24 for the subsequent 29 years of Ms. Connell's life, as well as approximately an additional 4
25 years following Ms. Connell's death.
26
27
28

1 Ms. Ahern is claiming that she chose to stay silent out of good will and kindness, but
2 has now changed her mind after nearly 34 years. At the same time, Ms. Ahern refuses to
3 acknowledge that since she intentionally allowed monies to pass to which she was legally
4 entitled to, which is categorically and emphatically disputed by Jacqueline, and for which
5 there is no evidence supporting such notion, the distributions would constitute gifts to Ms.
6 Connell and then to Ms. Connell's trust, the MTC Living Trust. As has been previously
7 stated in other pleadings, and which will be re-emphasized herein, there is no scenario in
8 which Ms. Ahern could have allowed these monies, that she claims that she has always
9 been legally entitled to, to pass to other individuals or entities without them being treated
10 as gifts. They were either gifts or they were not. There was and is no in between in this
11 regard.

14 Ms. Ahern has conclusively established by her admission that she failed to assert her
15 alleged rights, and in turn act on those rights, until nearly 34 years after the fact, which is
16 precisely the scenario in which the doctrine of laches is intended to apply. Therefore, for
17 the same logic and reason that the merits of a cause of action become irrelevant, and the
18 claim is barred due to the expiration of the applicable statute of limitations, there is no need
19 to look further at the issue in the present case. Ms. Ahern and her counsel knows the
20 realities of what has occurred and they are doing their best to divert this Court's attention
21 as the actions and patterns of behavior that have occurred speak for themselves. Ms.
22 Ahern's Objection represents nothing more than a desperate attempt to create a diversion
23 and smoke screen in hopes that she can turn off the spotlight that is shining brightly on her.
24 Despite the antics used by Ms. Ahern and her counsel, this Court must ensure that Ms.
25 Ahern's actions do not go without reprimand.

B. RESPONSES

B.1 Contained within the 41 pages of Ms. Ahern's Objections, there is a tremendous amount of misrepresentations and untruths, which amount to the blatant attempt to assassinate Jacqueline's character. Jacqueline has no ill will toward her mother, Ms. Ahern, despite what has happened, nor does Kathryn. For that reason, Jacqueline will take the high ground Ms. Ahern is the grandmother to two boys on Jacqueline's side and two boys on Kathryn's side. It is because of their love for their mother, and the opportunity for this family to once again be together that they refuse to engage in character assassinations against Ms. Ahern. Both Jacqueline and Kathryn remember how close knit this family was prior to Ms. Ahern's disappearance 19 months ago. The grandchildren are without their grandmother and the daughters are without their mother. As such, the basis of this Response is to discuss and analyze only the facts of what has transpired. Therefore, even though it goes without saying, the lack of a response to each and every misstatement made in the 41 page Objection should certainly not be taken as any type of admission by Jacqueline, nor Kathryn, as to the accusations and lies that have been spewed. Lest Ms. Ahern or her counsel forget, the actions taken by Ms. Ahern are the subject matter of this proceeding, not Jacqueline. If this Court specifically wishes for any baseless allegations not otherwise specifically addressed herein to be refuted by Jacqueline, upon such request Jacqueline will certainly address any concerns or desires for clarification that this Court might have.

B.2 Based on the above, this Response will address the misstatements in the order that they have been raised by Ms. Ahern in her Objection.

Assertions by Ms. Ahern: *Proper allocation of this disputed sixty-five percent*

1 (65%) interest would be accomplished by the execution of a deed by the successor trustee
2 conveying such interest to Trust No. 3, and would have been done usually no later than
3 nine (9) to twelve (12) months following the death of W.N. Connell.
(Page 10 of Objection)

4 *If in fact the disputed sixty-five percent (65%) interest was to be allocated to Trust*
5 *No. 3 as alleged by Petitioner JACQUELINE M. MONTOYA, MARJORIE T. CONNELL as*
6 *successor trustee was legally required to convey such interest via deed to the trustee of*
7 *Trust No. 3 and keep it separate from the assets of Trust No. 2.*
(Page 11 of Objection)

8 Response: This assertion of the failure to divide the Texas property and the gas, oil,
9 and mineral rights related to the Texas property was previously raised by Ms. Ahern and
10 was responded to at length and in great detail in Jacqueline's "Response to Motion to Refer
11 Contested Probate Matter to Master-Probate Commissioner per EDCR 4.16".

12 As stated in that pleading, the Trust expressly incorporated the power found under
13 NRS 163.385 which expressly allows a trustee to leave a property to remain legally
14 undivided between subtrusts and rather to allocate benefits from such undivided property
15 between subtrusts. Therefore, the fact that the Texas property went legally undivided at the
16 death of Mr. Connell was and is entirely inconsequential as it did not need to be actually
17 divided. Furthermore, if Ms. Ahern felt that it should have only been allocated to Trust No.
18 2 immediately, as is the basis of her entire, yet faulty, argument that all Texas property and
19 related rights belonged only to Trust No. 2, then she herself as a co-trustee could have and
20 should have taken such action at that time. Ms. Ahern took no such action, but rather
21 allowed the paper allocation of the income from the Texas property to be divided 35%/65%
22 as had been determined by the tax professionals who did the allocation in 1980 after Mr.
23 Connell's death.

24 Assertion by Ms. Ahern: *It is evident that MARJORIE understood that it was the*
25 *intent of W.N. CONNELL that his only child, ELEANOR, be entitled to the income from his*
26

1 *sole and separate property consisting of all of the Upton County, Texas Oil rights during*
2 *ELEANOR'S lifetime as expressed in the TRUST agreement, and the Upton County, Texas*
3 *Oil rights were accordingly treated as an asset of Trust No. 2 and never deeded to Trust*
4 *No. 3.*

(Pages 11 and 12 of Objection)

5 Response: As previously addressed, there was no obligation for the trustees,
6 Marjorie and Ms. Ahern, to do a deed, or deeds, to legally title the Texas property between
7 the two subtrusts. Therefore, no inference from the lack of deeds to both Trust No. 2 and
8 Trust No. 3 is relevant or proper. What is relevant is the Texas estate tax return showing
9 the allocation between Ms. Ahern and Marjorie. Ms. Ahern apparently wants to dispute the
10 fact that this allocation was done and to claim that it was not binding because of the
11 references to Ms. Ahern and Marjorie personally and not to Trusts No. 2 or Trust No. 3.
12 Having no leg to stand on to argue that this allocation was not properly done, Ms. Ahern
13 has reduced her argument to one of form over substance. However, the "substance", and
14 fact of the matter, is that the allocation that was represented on that return, which would
15 have been taken from the Form 706, was followed by both Ms. Ahern and Marjorie for 29
16 years and then approximately 4 years after that time period. As previously stated on
17 multiple occasions, Jacqueline has attempted to locate the Form 706, but unfortunately has
18 been unable to do so, the IRS has not retained a copy, and the preparer of the Form 706 has
19 indicated that due to the passage of time one was not kept. Therefore, the only evidence is
20 the Texas estate tax return and equally relevant Ms. Ahern's own divorce paperwork. For
21 ease of reference, attached as Exhibit "A" and incorporated herein by this reference, is the
22 declaration of her assets for Ms. Ahern which was prepared for use for her 1984 divorce
23 proceeding. In the middle of that document, on the right hand side of the page, the
24 following statement is made:
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1 *U/D 35% int in 2,300 acres near Midland Texas. Stepmother, who adopted Ellie*
2 *@ age 35, owns 65% under Trust she and Ellie's father established*

3 So not only does a tax return show the 65%/35% split, not only has 33 years of the
4 65%/35% split occurred, but in a document declaring her assets for purposes of divorce,
5 Ms. Ahern declares the right to only 35% of the income, not 100%. For Ms. Ahern to claim
6 after 34 years, and after every previous indication and pattern of conduct that she gave to
7 relevant parties that she was entitled to only 35% of the Texas land and proceeds, that she
8 really has always been entitled to 100% of the income is entirely disingenuous.
9 Furthermore, Ms. Ahern being entitled to 100% of the income is entirely untrue, as has
10 been well documented in the previous pleadings of Jacqueline. Just as any plaintiff has the
11 obligation to speak up in a timely manner if they feel that their rights have been violated,
12 Ms. Ahern cannot be allowed to change the status quo some 34 years later, even assuming
13 *arguendo* that she was rightfully entitled to 100% of the proceeds, which is categorically
14 denied by Jacqueline and established by all uncontroverted evidence.
15

16 As to the alleged intent of Mr. Connell desiring for Ms. Ahern to keep all of the
17 income generated from the Texas property, this must certainly explain why the Trust does
18 not contain a simple sentence stating exactly this intent and instead states, in reference to
19 Trust No. 2, that:
20

21 ***"In the event any** of the real property located in Upton County, Texas, as listed*
22 *on the original Schedule "A" attached hereto, forms a part of the corpus of this*
23 *Trust, the Residual Beneficiary shall be paid an additional payment from the*
24 *income received from the Decedent's half of the community property, which forms*
25 *a part of the corpus of this Trust, equal to all of the income received by this Trust*
26 *from the real property located in Upton County, Texas."* (Emphasis added)
27

28 Clearly when one wants to make an iron clad declaration, it is not common, nor rational,
that they use caveats such as "if" or "in the event". These are intended to be conditional

1 clauses, not mandates. Ms. Ahern is sadly mistaken about what the Trust language actually
2 states. Nothing whatsoever found in the Trust requires that all of the Texas property and
3 the resulting income belongs to Trust No. 2. As discussed ad nauseam in the prior
4 pleadings from Jacqueline, Trust No. 3 was expressly declared to function as a marital trust
5 and hold a sufficient amount of assets that would otherwise severely reduce those assets
6 that would otherwise be subject to estate tax. Section Third of the Trust, titled Marital
7 Deduction, unequivocally provides, in pertinent part, that:

8
9 *The Trustee **shall allocate** to Trust No. 3 **from the Decedent's separate***
10 ***property** the fractional share of the said assets which is equal to the **maximum***
11 ***marital deduction** allowed for federal estate tax purposes [Emphasis added].*

12 Therefore, this farce that all of Mr. Connell's separate property was to belong to Trust No.
13 2 is absurdly raised by Ms. Ahern as it is in direct contrast to the actual terms of the Trust
14 instrument. Ms. Ahern is entirely incorrect in her assertion that Trust No. 2 mandated that
15 it hold all of the Texas property, but apparently refuses to accept the plain language that
16 was used.

17
18 Obviously, the determination was made to have 65% of the Texas property and the
19 accompanying oil, gas, and mineral rights therefrom, belong to Trust No. 3. As repeatedly
20 stated, if Ms. Ahern felt that this was improperly done, then she, in her capacity as a co-
21 trustee, could have taken appropriate action to correct this. She did not and affirmatively
22 admits that she let this allocation remain unchanged for 33 years. The reasoning as to why
23 she failed to take the action is irrelevant. Ms. Ahern by her own admission consulted with
24 an attorney and took no action. Just as the homeowner who takes no action about
25 encroachment onto their property or the party who feels that an agreement has been
26 breached to their detriment is subject to, the law requires action to seek redress within a
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28

1 reasonable time or these alleged rights are lost. It is not necessary to go into further
2 discussion about the purpose of statute of limitations or the doctrine of laches as the public
3 policy for these concepts are self evident.
4

5 Assertion by Ms. Ahern: *The 2009 PETITION was filed with this Court on August*
6 *17, 2009. In essence, the action was initiated and driven by Petitioner JACQUELINE M.*
7 *MONTOYA and her attorney, DAVID A. STRAUS, Esquire, and primarily was for the*
8 *benefit of JACQUELINE M. MONTOYA and her sister, KATHRYN A. BOUVIER. (Page 19*
9 *of Objection)*

10 Response: Also, as addressed ad nauseam in prior pleadings, it is entirely
11 nonsensical to suggest that Jacqueline and Kathryn would want to have a declaration in
12 place that Ms. Ahern was entitled to 100% of the Texas property income when they were
13 receiving, through their interests in the MTC Living Trust, 65% of such income. What
14 rational reason would someone choose to give up income rights? Further, how would
15 giving up 65% of such income be primarily for Jacqueline's and Kathryn's benefit, as
16 claimed by Ms. Ahern. If Jacqueline and Kathryn wanted to give up their income rights as
17 Ms. Ahern thought this 2009 Petition was accomplishing, then why exactly did Ms. Ahern
18 continue to allow them to receive, and why in turn did they continue to accept, distributions
19 of 65% for nearly 4 years after the Order was entered? Why too did Jacqueline send an e-
20 mail to Attorney Straus after her initial review of the 2009 Petition and state, in pertinent
21 part, that *"I thought the goal was to make sure that the 1979 Trust was clear so that my*
22 *mom could not give away her 1/3 interest to anyone other than my sister and I"*?

23 Along these same lines, has Jacqueline and Kathryn now supposedly had a change
24 of heart and decided that they really did want their 65% interest through the MTC Living
25 Trust? As can be seen, Ms. Ahern's assertion behind what the 2009 Petition was intended
26 to accomplish and did actually accomplish is entirely inconsistent with reality and clearly
27
28

1 shows the lengths to which Ms. Ahern is desperate to make blatant misrepresentations to
2 this Court.

3 Assertion by Ms. Ahern: *When W.N. CONNELL passed away, MARJORIE T.*
4 *CONNELL, as the surviving Trustor and Trustee of the TRUST, began paying herself*
5 *sixty-five percent (65%) of the Upton County, Texas Oil right income. ELEANOR*
6 ***consulted an attorney** and was advised that although ELEANOR was entitled to all*
7 *of the Upton County, Texas, Oil right income, if she asserted her rights to all of the income*
8 *against MARJORIE at that time it would in all likelihood result in MARJORIE*
9 *disinheriting ELEANOR when MARJORIE died. The advice essentially was to take less*
10 *now so you could inherit all of MARJORIE's estate later. Although **ELEANOR knew** that*
11 *she (ELEANOR) was entitled to one hundred (100%) of the Upton County, Texas, oil*
12 *income, she consented to MARJORIE receiving the sixty-five percent (65%). The advice*
13 *of the attorney and ELEANOR's love and respect for, and appreciation of, MARJORIE T.*
14 *CONNELL, as her mother, lead to **her acquiescence**. (Emphasis added) (Pages 24 and*
15 *25 of Objection)*

16 *However, this allowance was in the sole and absolute discretion of ELEANOR, and*
17 *was subject to unilateral change or revocation in the future on ELEANOR's part due to her*
18 *legal right to all of the income during her lifetime. (Page 25 of Objection)*

19 Response: This conduct of Ms. Ahern is precisely the type of conduct to which the
20 doctrine of laches is intended to apply. While Jacqueline and Kathryn do not admit in any
21 way that Ms. Ahern is or was entitled to 100% of the income, assuming *arguendo* that Ms.
22 Ahern had legal rights that would entitle her to 100% of the income, the doctrine of laches
23 prevents her from asserting such claim at this point, more than 33 years after the split of
24 the Trust. Ms. Ahern took no action to enforce her supposed rights and instead allowed the
25 65%/35% distribution pattern to remain in effect for over 33 years. Ms. Ahern had a legal
26 consultation, received legal advice, and understood her perceived legal rights, but still she
27 chose to do nothing to enforce her perceived rights. Ms. Ahern has unquestionably slept
28 on her rights and this is precisely why the doctrine of laches must be applied here. A person
must not sleep on their legal rights. If a person does sleep on their legal rights, they are
required to accept the status quo after the expiration of an reasonable amount of time. 33

1 years is certainly not a reasonable amount of time to allow to expire. Ms. Ahern accepted
2 the status quo for over 33 years and has to live with it, even assuming *arguendo* that legally
3 she was always entitled to receive all 100% of the income which is vehemently denied as
4 being accurate. Furthermore, as shown, Ms. Ahern represented on her statement of assets
5 for her divorce in 1984, a legal proceeding requiring the communication and representation
6 of accurate facts, that she had a 35% interest, not a 100% income interest.
7

8 Assertion by Ms. Ahern: *Also the arrangement was that since MARJORIE was in*
9 *fact receiving sixty-five percent (65%) of the income, MARJORIE would pay the income*
10 *tax attributable to the income she received or her share would be charged the same, which*
11 *was done. ELEANOR accordingly did not file any gift tax returns since if the monies had*
12 *been considered a gift, MARJORIE would not have been paying the tax thereon. (Page 25*
13 *of Objection)*

14 Response: The absurdity of this notion is truly beyond comprehension. Ms. Ahern
15 cannot have it both ways. Either she was making a gift by allowing the income that she
16 claims that she was rightfully entitled to pass to Marjorie or she was not legally entitled to
17 it in the first place. If Ms. Ahern was entitled to it, but did not file a gift tax return, then she
18 was in violation of the internal revenue code. The fact that Marjorie paid the taxes on the
19 income herself, and Ms. Ahern did not, is entirely irrelevant as to whether these would have
20 been gifts or not. If anything, it fully supports the fact that Marjorie was herself paying
21 taxes on income that she received from the Trust as a beneficiary and was obligated to pay
22 in such capacity. Notwithstanding this last point, and returning to Ms. Ahern's logic, if Ms.
23 Ahern had also paid the tax on the income that she supposedly allowed Marjorie to have,
24 but which Marjorie was not legally entitled to receive, this would have been an additional
25 gift on top of the gift of income.
26

27 The following passage is taken directly from www.irs.gov:
28

1 *The gift tax is a tax on the transfer of property by one individual to another while*
2 *receiving nothing, or less than full value, in return. The tax applies whether the*
3 *donor intends the transfer to be a gift or not.*

4 *The gift tax applies to the transfer by gift of any property. You make a gift if you*
5 *give property (including money), or the use of or income from property, without*
6 *expecting to receive something of at least equal value in return. If you sell*
7 *something at less than its full value or if you make an interest-free or*
8 *reduced-interest loan, you may be making a gift.*

9 Just as if Ms. Ahern owned a second residence and allowed Marjorie to live in the
10 home rent free, Ms. Ahern would be making a taxable gift to Marjorie. As stated in the
11 passage, whether or not Ms. Ahern understood the law and did not realize that her actions
12 created a gift is irrelevant in determining whether it would be a gift for which she would be
13 responsible to pay gift tax on, via the filing of returns. As previously stated in other
14 pleadings, if Ms. Ahern insists that she was entitled to 100% of the income, but allowed 65%
15 of it to go to Marjorie and then to Marjorie's Trust, then she has a tremendous gift tax
16 obligation that is due and owing to the IRS.

17 Assuming *arguendo* that Ms. Ahern did in fact own 100% of the income, then 100%
18 of the income would be included in her gross income. Pursuant to Internal Revenue Code
19 ("IRC") 61(a)(15), "gross income" means all income from whatever source derived,
20 including (but not limited to) the following items:

21 *(15) Income from an interest in an estate or trust.*

22 Therefore, 100% of the Trust income that Ms. Ahern "allowed" Marjorie to have, and then
23 to Jacqueline and Kathryn, through the MTC Living Trust, would also be included in Ms.
24 Ahern's taxable income because taxable income is gross income less deductions. There
25 would be no deduction allowed to Ms. Ahern for gifting the property to Marjorie. As
26 provided in IRC 63(a) "In general Except as provided in subsection (b), for purposes of this
27 28

1 subtitle, the term "taxable income" means gross income minus the deductions allowed by
2 this chapter (other than the standard deduction)".

3 Helvering v. Horst, 311 U.S. 112 (1940), is the main U.S. Supreme Court case on
4 "assignment of income." As stated by Ms. Ahern, her argument is that as she assigned the
5 income to Marjorie, then Marjorie was obligated to pay the tax. This is entirely incorrect
6 and contrary to the law on the subject. As stated by the U.S. Supreme Court in *Helvering*,
7 "*The power to dispose of income is the equivalent of ownership of it. The exercise of that*
8 *power to procure the payment of income to another is the enjoyment and hence the*
9 *realization of the income by him who exercises it.*" 311 U.S. 112 at 118. Essentially, a
10 transfer of income without transferring the underlying asset results in an income tax
11 liability to the transferor who transfers the income.

12 As stated, Ms. Ahern cannot have it both ways. The reality is that Ms. Ahern was not
13 entitled to 100% of the income and the allocation was not improperly done, and this
14 explains why gift tax returns were not filed on her behalf by her tax representatives. Simply
15 put, Ms. Ahern received the 35% that she was entitled to and Marjorie received the 65% that
16 she was entitled to, and each was responsible for the payments of taxes on their own
17 income.

18 Assertion by Ms. Ahern: *ELEANOR, who had grown accustom to receiving only*
19 *thirty-five percent (35%) of the Upton County, Texas Oil right income, allowed her two*
20 *daughters, Petitioner, JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER, to*
21 *receive the income from the sixty-five percent (65%) interest that MARJORIE T.*
22 *CONNELL had been receiving. This allowance was again in the sole and absolute*
23 *discretion of ELEANOR, and was subject to unilateral change or revocation in the future*
24 *on ELEANOR's part. ELEANOR did not need the money and she took joy and pride in*
25 *helping her daughters and making their lives, and the lives of her grandchildren, better.*
26 (Page 26 of Objection)

27 Response: So what Ms. Ahern is once again saying is that she created a reliance on
28

1 the part of her daughters that the MTC Trust was entitled to 65% of the income and never
2 spoke up to assert that she was entitled to all 100% of the income. Furthermore, as
3 discussed above, if the 2009 Order did what Ms. Ahern claims it did, then why exactly were
4 Jacqueline and Kathryn continuing to receive income that they supposedly did not want?
5 Also, why again did Jacqueline reference her mother's interest in the Trust being 1/3 in her
6 e-mail to Attorney Straus? Ms. Ahern's assertions are entirely baseless and unsupported
7 by any evidence.
8

9
10 Assertion by Ms. Ahern: *It is undisputed that at the time of the her death, the Upton*
11 *County, Texas, Oil rights were not titled in the name of MARJORIE T. CONNELL but were*
12 *titled in the name of the TRUST.*

13 (Page 30 of Objection)

14
15 The Texas probate proceeding was in fact an effort by Petitioner JACQUELINE M.
16 MONTROYA to have the Last Will And Testament admitted to probate and the time pass
17 for challenging the validity of the terms of the Will, all unbeknownst to ELEANOR.
18 (Page 31 of Objection)

19 Response: It is not disputed that there was not a formal division of the Texas
20 property following the death of Marjorie. In turn, it is further not disputed that because
21 there was not a formal division reflecting the 33 year pattern of the 65%/35% split that the
22 only name appearing as the party in the negotiations with the oil, gas, and mineral rights
23 was the Trust, and not also the MTC Living Trust. These facts have no relevance to the
24 matter. As discussed extensively in prior pleadings and above, the controlling fact here is
25 that a 35%/65% split was done for purposes of tax allocation/reduction/deferment, as
26 mandated by the terms of the Trust, and that pattern was followed for the last 33 years by
27 Ms. Ahern, including after the leases were negotiated and signed. The failure to have the
28 formal division done is not relevant to the legal rights of the MTC Living Trust, which has
been filing income tax returns on the 65% that it has received since Marjorie's passing.

1 The Texas probate for Marjorie was instituted for the purpose of completing the
2 formal titling of the Texas property so that deeds reflecting the division between the two
3 trusts, meaning the MTC Living Trust and Trust No. 2, were prepared. Now that this action
4 has been attempted to be taken, Ms. Ahern is attempting to block it. In other words, Ms.
5 Ahern is insinuating that it should have been done earlier, but yet when Jacqueline is
6 attempting to take this action, Ms. Ahern argues that she should not be doing that either.
7 In essence, like the gift discussion, Ms. Ahern wants to have it both ways which is not
8 possible. Ms. Ahern continues to emphasize that there was bad faith on the part of
9 Jacqueline in instituting the Texas probate for Marjorie, when in reality there was none.
10 Once again, Ms. Ahern is attempting to deflect the spotlight from herself and her actions.
11

12
13 Assertion by Ms. Ahern: *it is very likely that Petitioner JACQUELINE M.*
14 *MONTOYA has somehow spent her entire inheritance from MARJORIE T. CONNELL of*
15 *approximately Two Million Three Hundred Two Thousand Five Hundred Dollars (\$2,302,*
16 *500.00) in only four (4) years.*

17 *These excessive spending habits will likely result in the immediate consumption of*
18 *any distribution made to Petitioner JACQUELINE M. MONTOYA*
19 (Page 34 of Objection)

20 Response: Clearly the persistent inflammatory comments found in the Objection are
21 a conscious tactic by Ms. Ahern, in a desperate attempt, to distract this Court's attention.
22 The fact of the matter is that the current wealth of Jacqueline, nor Kathryn, is irrelevant.
23 What is relevant is that Ms. Ahern abruptly and without warning decided that she would
24 no longer allow the 65% distribution of income to flow through the Trust to the MTC Living
25 Trust, and there was no time for Jacqueline to seek the Court's protection prior to the action
26 being taken by Ms. Ahern.

27 As any injunction is intended to do, Jacqueline merely seeks to have the status quo
28

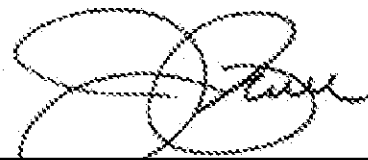
1 returned, and damage mitigated, until such time as this Court makes the determination that
2 Ms. Ahern's actions have been inappropriate and that there was no justification in taking
3 the improper action that she did. For Ms. Ahern to assert that it is Jacqueline that has
4 unclean hands is completely absurd since Ms. Ahern is the person responsible for the harm
5 that has occurred, and in turn the reason for this proceeding, since she chose to violate the
6 legal rights of Jacqueline and Kathryn without warning.

8 **C. CONCLUSION**

9 JACQUELINE M. MONTOYA hereby prays that this Court dismiss and deny Ms.
10 Ahern's "Motion to Dismiss Petition for Declaratory Judgment Regarding Limited Interest
11 of Trust Assets Pursuant to NRS 30.040, NRS 153.031(e), and NRS 164.033(1)(a) for
12 Failure to State a Claim Upon Which Relief Can Be Granted Per NRCP 12(b)(5)" in its
13 entirety and in turn grant the relief sought in the "Petition to Compel Trustee to Distribute
14 Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and
15 Declaration of the Applicability of the Doctrine of Laches" and the "Petition for Declaratory
16 Judgment Regarding Limited Interest of Trust Assets pursuant to NRS 30.040, NRS
17 153.031(1)(E), and NRS 164.033(1)(A)" in its entirety.

20 Respectfully submitted,

21 THE RUSHFORTH FIRM, LTD.

23 

24 _____
25 JOSEPH J. POWELL
26 State Bar No. 8875
27
28

Exhibit “A”

NAME Eleanor Marguerite Connell Plattman AGE 75
 WIFE divorced August 1983 AGE _____
 ADDRESS 6225 W. Buckskin Ave.
* SVN 89109 PHONE _____
 SS NO. (H) _____ SS NO. (W) _____
 ATTORNEY Steven Scow PHONE _____
 ACCOUNTANT _____ PHONE _____
 INVESTMENT OBJECTIVES _____

Cecqueline Marguerite 18
Kathryn Anne 14
 * Use mailing address:
P.O. Box 710
SVN 89125
 WILLS (H) _____ (W) _____
 BANK NAMED _____ CAPACITY _____

TAX BRACKET _____
 ATTORNEYS RECOMMENDED _____

| ASSETS | COMMUNITY PROP. | SEPARATE | DATE | FOLLOW UP COMMENTS |
|------------------|-----------------|--|------|--------------------|
| Ashman Equipment | 40,000.00 | Profit Sharing (Stop here until ex-husband quits Co. or dies He is 48) | | |
| 165 W. Bohemia | 250,000.00 | To be zoned as Commercial property | | |
| 409 Del Rio Ave. | 80,000.00 | Class # 43-H-Mtg. | | |
| One Acre | 42,500.00 | Between Howard Buckskin; on Waverick off Chayenne | | |
| Two Acres | 50,000.00 | 1/2 int in 4 acre plot @ Buckskin + Mustang | | |
| New State Bank | 10,000.00 | Money Market | | |
| First Citizens | 15,000.00 | @ 7 1/4 % | | |
| Whole Life | 100,000.00 | Co. is ? | | |
| I.R.A. | 2,000.00 | Danison Oil | | |
| Texas Royalties | 440,000.00 | Assume 10 year payout - 1/2 35% int in 2,300 acres near Midland | | |
| Texas Surface | 402,500.00 | Surface of 2380 acres @ \$500 per acre | | |

Total Community _____
 Total Husband _____
 Total Wife 1,419,000.00
 Total All Property _____

RECOMMENDATIONS: Wants living trust with mother, as Trustee should Ellie be unwilling or unable to serve, with Trust as Successor Trustee to Marguerite T. Connell. As they reach age 21, each daughter to become a Co-Trustee with mother or Bank Wants Trust to last per Stipes right up to Rule 104. Perpetuation of children's income with income to all to Marguerite Connell. If all be deceased and no issue, then to Shriners Hospital for Children.

His grantor's intent that no funds, income or principal from Trust ever be considered to or for use by former husband, Robert S. Plattman, and should it be found that either daughter is co-trustee directly or indirectly, then she would lose her status as co-trustee for 10 years as well as her right to control income, other than as decided upon in the discretion of the other co-trustees.

In event of disagreement, a majority of the trustees shall govern.
 R. Johnson
 TRUST SERVICE OFFICER

CREDIT FOR INTERVIEW BRANCH NO. _____ OFFICER _____
 OTHER _____

Found this on

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate -
Trust/Conservatorships**

COURT MINUTES

January 14, 2014

P-09-066425-T

In the Matter of the Trust of:

The W.N. Connell and Marjorie T. Connell Living Trust, dtd May 18, 1972

January 14, 2014 9:00 AM All Pending Motions

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 03H

COURT CLERK: Linda Denman

COURT RECORDER: Kerry Esparza

PARTIES:

John Mugan, Attorney for Trustee Eleanor Ahern

Joseph Powell, Attorney for Beneficiary Montoya

JOURNAL ENTRIES

HEARING ON MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(e), and NRS 164.033(1)(A) FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PER NRCP 12(B)(5) Argument by counsel as to claims preclusion and whether the elements had been met since the matter was brought before the Court in 2009 on a reformation and clarification as to the beneficiaries in the event of petitioner's death. **COURT STATED ITS FINDINGS** that the elements for claim preclusion have not been met since there is no way to anticipate that four years later the trustee would change the distribution for those issues to have been raised in 2009. **COURT ORDERED Motion to Dismiss DENIED.**

HEARING ON PETITION TO COMPEL TRUSTEE TO DISTRIBUTE ACCRUED INCOME AND FUTURE INCOME RECEIVED FROM OIL, GAS, AND MINERAL LEASES AND DECLARATION OF THE APPLICABILITY OF THE DOCTRINE OF LACHESCounsel argued the Court's previous ruling that granted Trustee Ahern the 35% income from the Texas oil and gas leases and the 65% income in dispute to be held until a hearing could be held, the effect of spoliation and Doctrine of Laches on Trustee Ahern's change of distribution, and irreparable harm/success on the merits as to all parties. Upon inquiry of the Court as to bringing this petition now, Mr. Powell stated he felt the issues raised could be dealt with today which would make the upcoming evidentiary hearing unnecessary. **COURT STATED ITS FINDINGS** that sworn testimony needed to be heard since the facts of distribution from the original trust are in dispute and to decide if Laches is applicable. **COURT ORDERED Petition to Compel DENIED WITHOUT PREJUDICE.**

PRINT DATE: 01/21/2014

Page 1 of 2

Minutes Date:

January 14, 2014

AA 0579

INTERIM CONDITIONS:

FUTURE HEARINGS:

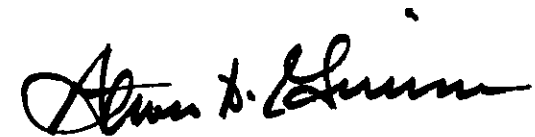
January 14, 2014 9:00 AM Motion
Denman, Linda
Sturman, Gloria
Esparza, Kerry
RJC Courtroom 03H

January 14, 2014 9:00 AM Petition - HM
Denman, Linda
Sturman, Gloria
Esparza, Kerry
RJC Courtroom 03H

January 24, 2014 11:00 AM
Denman, Linda
Sturman, Gloria
RJC Courtroom 03H
Esparza, Kerry

February 18, 2014 9:00 AM
Denman, Linda
Sturman, Gloria
RJC Courtroom 03H
Esparza, Kerry

RTRAN



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

MATTER OF THE TRUST OF W.N.
CONNELL AND MARJORIE T.
CONNELL LIVING TRUST DATED
5/18/72

CASE NO. P-066425

DEPT. XXVI

BEFORE THE HONORABLE GLORIA J. STURMAN, DISTRICT COURT JUDGE

TUESDAY, JANUARY 14, 2014

**RECORDER'S TRANSCRIPT
MOTIONS HEARING**

APPEARANCES:

For the Plaintiff: Michael D. Lum, Esq.
John R. Mugan, Esq.
JEFFREY BURR, LTD.

For the Respondent: Joseph J. Powell, Esq.
THE RUSHFORTH FIRM, PLLC

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 TUESDAY, JANUARY 14, 2014 AT 9:02 A.M.

2 THE COURT: Peter 9066425.

3 MR. POWELL: Good morning, Your Honor. Joey Powell
4 appearing on behalf of Jacqueline Montoya.

5 MR. MUGAN: Good morning, Your Honor. John Mugan on
6 behalf of Eleanor Ahern.

7 MR. LUM: Good morning, Your Honor. Michael Lum bar
8 number 12997 on behalf of Eleanor Ahern.

9 THE COURT: Okay. We have two motions. The first one is
10 a motion to dismiss the debt for relief action and the second
11 one is a hearing to compel distributions. So we'll take the
12 motion to dismiss first.

13 MR. MUGAN: If it pleases the Court, I presume that
14 you've had an opportunity to review the motion. Basically
15 claim preclusion and there's three things that are required.
16 The parties or their privies are the same. The final judgment
17 in the first action is valid. And most importantly the
18 subsequent action is based on the same claims or any part of
19 them that were or could have been brought in the first case.

20 It's undisputed there's two cases involved. A 2009
21 case, which involved the trust, specifically trust number two,
22 reformation construction action. Basically construed the
23 document, said who the residuary beneficiaries are when my
24 client died. And there's no question that the privies and
25 parties are the same as in this action. There's no question

1 that the judgment is valid. There's an order entered. Notice
2 of entry back in 2009. Appeal time et cetera is long past.

3 Probably the most important one is that number
4 three, that the claims could have been brought in the first
5 case. Opposing counsel cited the Tarkanian (phonetic) case as
6 saying that the same claims have to be included in both
7 actions. The Tarkanian case was back in '94. Five Star
8 Capital Crop which we cited a 2008 case changed that. And
9 basically said that it's broadened to include all claims which
10 could have been brought in the first action.

11 And there's no question that the claims -- I mean,
12 we're dealing with the same thing. Trust number -- the trust,
13 trust number two, the rights thereunder. Also I don't think
14 there's any question that we're dealing with the same oil
15 rights. If you look at the pleading in 2009 it refers to the
16 oil assets in trust number two and says that there's an
17 appraisal being done. And it estimates the value at 700,000.

18 As we set out in our pleading Jackie, the
19 Petitioner, did in fact have an appraisal done. It came back
20 at \$716,000 and it was for all of the oil assets not just 35
21 percent of them.

22 And so arguably not only do we have claim preclusion
23 we also have issue preclusion because we're basically dealing
24 with the exact same thing. The rights of the parties under
25 trust number two.

1 And so our belief is that claim preclusion is
2 applicable. And accordingly this action needs to be
3 dismissed. In the alternative we even think issue preclusion
4 is applicable because of what I stated.

5 Thank you, Your Honor.

6 THE COURT: Okay.

7 MR. POWELL: Your Honor, as we discussed the last time
8 the 2009 petition is a reformation petition. It dealt with
9 basically in essence a couple of basically two major issues.
10 That was the succession of who the residuary beneficiaries
11 were of trust number two and then also as well who was going
12 to be the successor trustee of that.

13 If you've read the petition in 2009 and the order
14 that was in 2009, that's the substantive part of what is going
15 on. In fact, the petition even states these issues didn't
16 come up with trust number three, they're only related to trust
17 number two, but we can see what was done in trust number three
18 in terms of final distribution, who would be the trustees. We
19 didn't have that same matching language in trust two. So we
20 need to solve that issue.

21 Arguably was it critical that the 2009 petition was
22 brought? I would say probably not just because you could
23 glean from trust number three what the intent was. It was
24 more of a clarification petition just so there weren't issues
25 down the road. That's what the 2009 petition did.

1 THE COURT: So the fact that at the same time that trust
2 three was being litigated that your clients didn't seek to
3 also litigate the issue with respect to trust number two
4 doesn't preclude them from now doing so?

5 MR. POWELL: Well, correct, exactly. And there were no
6 issues with trust number three. Trust number three was
7 basically what we refer to as the survivor's trust. But
8 because of the timeframe in which it was done it also included
9 essentially marital trust as well. So it was a marital trust
10 along with a survivor's trust. In which Mrs. Connell as the
11 surviving trustor had the ability to freely amend that trust.
12 She also had the ability to do a -- exercise a power of
13 appointment, which she did.

14 And so at the time there was -- the relevance of
15 trust number three was not in question. That had already been
16 in exercise of power of appointment to her individual trust
17 that she setup the MTC living trust.

18 So this petition, this reformation petition was not
19 a declaration of rights in terms of current rights. What it
20 was, was to have clarification at the time that Ms. Ahern
21 passed was the issue here, so that there wasn't any confusion.
22 Her children, my client and her sister were deemed to be the
23 residuary beneficiaries and also as well the successor
24 trustees.

25 So that was the extent of what that petition did.

1 Again, if you look at what the prayer was in that petition, if
2 you look what the accompanying order said, that's what it did.
3 And in their petition and in subsequent petitions as well in
4 their arguments they essentially said that -- really that my
5 client and her sister were behind that petition. Even though
6 Ms. Ahern had her own counsel. Even though the petition was
7 discussed with her own counsel, somehow my clients were behind
8 that.

9 So which again, begs the logical question --

10 THE COURT: So you're contesting that the issue that it
11 seems Mr. Mugan is focused on is the same issues were could
12 have been filed, but it's your position that there -- it
13 wasn't necessarily the same parties, it wasn't necessarily a
14 final judgment as to the issues that are at issue here?

15 MR. POWELL: Correct, correct. It wasn't even an issue
16 at that point because there was a 65/35 split of this income.
17 And again, it continued for nearly four years after the order
18 was entered. Which again begs the question is, if that was
19 the point of what the order was, was this declaration of
20 rights, why exactly is the status quo being followed for an
21 additional four years after that fact?

22 The fact of the matter is it wasn't a declaration of
23 rights as to Ms. Ahern. It wasn't a declaration of rights as
24 to the issue that's now present which is the 65/35 split. It
25 was a clarification as to what would happen at Ms. Ahern's

1 death. And what it was, was that my client and her sister
2 were to be the residuary beneficiaries as basically was
3 gleaned from and was consistent with the way that trust three
4 read. Trust three ultimately wound up being different because
5 it -- exercise the power of appointment so.

6 THE COURT: All right, thank you.

7 MR. POWELL: Yeah.

8 THE COURT: Anything else, Mr. Mugan?

9 MR. MUGAN: Yes, thank you, Your Honor. We're not
10 arguing issue preclusion. Issue preclusion, the claims have
11 to be identical. We're arguing claim preclusion.

12 THE COURT: Right.

13 MR. MUGAN: Which is much, much broader and much more
14 expansive. There doesn't have to be a final judgment on the
15 specific issue in the first case under Nevada law claim
16 preclusion. You don't need a final judgment. Alls [sic] you
17 need is that the claims, or any part of them in the first case
18 -- in the second case, excuse me, could have been brought in
19 the first case. And there's no question it could have been
20 brought in the first case. And this argument about trust
21 number three and trust number two.

22 I believe it's very, very important when you look at
23 the pleadings in the first case they refer to the oil assets.
24 And again, I repeat myself and I apologize. They reference an
25 appraisal being done. And it's in the approximate amount of

1 \$700,000.

2 And it's undisputed that there was an appraisal done
3 by his client in 2009 that included all of the oil rights; not
4 35 percent. So all of the oil rights were included in trust
5 number two. And that's what we were talking about in the
6 first case. And even if we weren't you don't need a final
7 judgment on the issue. Under claim preclusion it's just a
8 claim that could have been brought in the first action. It's
9 very, very broad and expansive the Nevada position under Five
10 Star.

11 Thank you.

12 THE COURT: Okay. I'm not understanding that there
13 shouldn't -- there doesn't have to be a valid final judgment.
14 I think that that is an essential issue. Sit back down, Mr.
15 Powell. You don't get to talk again.

16 MR. POWELL: Sorry.

17 THE COURT: The same parties or their privies are
18 involved in both cases. A valid final judgment has been
19 entered and the subsequent action is based on the same claims
20 or any part of them could have been brought in the first case.
21 That's to me, I don't see that it meets any of those elements.
22 I don't think it's the same parties. We have a judgment on
23 something that's entirely different than what's involved here.

24 I guess you could have litigated at the same time,
25 but it -- not to the extent that I feel that they're precluded

1 from litigating it now. I mean, it was an entirely different
2 and I think somewhat I guess a previous issue that was
3 reasonably litigated when it was litigated. But there's
4 nothing to indicate that you would need to litigate this issue
5 because nobody knew that four years in the future the trustee
6 was going to change how she's making distributions. I mean,
7 nobody could have anticipated that. So how would you litigate
8 it?

9 To me it just doesn't seem that it's an issue that
10 should be precluded from being litigated at this time. So I'm
11 going to deny the motion to dismiss the declaratory relief
12 petition.

13 Then we have the second issue which is the -- this
14 is now your turn, Mr. Powell.

15 MR. POWELL: Okay.

16 THE COURT: Which is the issue of whether distributions
17 should be made.

18 MR. POWELL: Your Honor, as is pointed out, we have a 33
19 year, we're now in year 34, status quo distribution of 65/35.
20 That is going back to the way that the trust was initially
21 allocated between trust two and trust three in approximately
22 1980. That the -- Mr. Connell died I think in December of
23 '79. So returns were done in '80.

24 From '80 on we had a situation where Mrs. Connell as
25 the surviving trustor received 65 percent of this oil gas

1 mineral income. And Ms. Ahern received 35 percent. Also in
2 1980 as well Ms. Ahern became a co-trustee of the trust as
3 well, which is a significant fact. So it was Ms. Ahern and
4 Ms. Connell as trustees. These returns were done. And for 34
5 -- or 29 --

6 THE COURT: Okay.

7 MR. POWELL: Yes?

8 THE COURT: But didn't we already litigate or argue the
9 whole issue of whether there -- we should maintain the status
10 quo, or they should be reinstated? And didn't we already rule
11 on that? And isn't that what we're having the trial for in a
12 month or so?

13 MR. POWELL: I --

14 THE COURT: What's the change? In other words --

15 MR. POWELL: Well --

16 THE COURT: -- why would we change -- six weeks before
17 the trial --

18 MR. POWELL: Sure, I understand.

19 THE COURT: -- why would we change and say no. Now we've
20 got too many distributions here?

21 MR. POWELL: Well --

22 THE COURT: What's the change, or why would I change that
23 previous status quo that you've established?

24 MR. POWELL: Well, one, the issue previous was that we
25 had not petitioned for relief to reinstate that status quo

1 until such time as a final determination was made. So that's
2 one issue. Secondary issue was it was argued that the -- we
3 hadn't made the argument supposedly about laches. We feel
4 like the hearing in six weeks does not need to occur. That
5 the doctrine of laches must apply here.

6 We also have as well, we have a clear declaration
7 from Ms. Ahern that she was aware at the time that supposedly
8 she had these rights but she claims she consulted with an
9 attorney who told her that she had these rights. She then
10 decided that I guess apparently on the advice of the attorney
11 she may not want to actually enforce these rights because she
12 might be better off simply waiting for -- she might be better
13 not upsetting Ms. Connell for fear that she might get
14 disinherited from Ms. Connell's estate plan.

15 In fact, the language that's actually used in her
16 response is that she acquiesced. We believe the doctrine of
17 laches applies here and makes all of this case irrelevant in
18 terms of needing to proceed forward. The doctrine of laches
19 is supposed to prevent somebody from sleeping on their rights.
20 And then in this case 33 years down the road arguing that they
21 have rights, they have enforceable rights and they have
22 justification for doing what they did.

23 THE COURT: So you're not just seeking to have the
24 distributions reinstated in anticipation of the outcome of the
25 ultimate hearing. You're saying there's no need to have that

1 hearing?

2 MR. POWELL: There's no need to have that hearing because
3 the doctrine of laches is applicable here. The Kuni case as
4 -- at which seems to be the landmark case for doctrine of
5 laches, that was a 22 year period of sleeping on one's rights.
6 This is again, we're in year 34 now. This is the first time
7 again that there's been this assertion that no. I always had
8 this hundred percent right to the income, not the 35 percent
9 income that I was taking for 29 years of Ms. Connell's life
10 and then four years subsequent to that.

11 So we believe as we've outlined the doctrine of
12 laches is applicable here and needs to be enforced.

13 Now we don't need to even -- just like a statute of
14 limitations issue, we don't need to get into the substantive
15 arguments because the doctrine of laches has to apply. Even
16 assuming arguendo that she does have this right. She slept on
17 it for 33, 34 year snow. And this is not behavior that should
18 be rewarded. Especially in this court, a court of equity.

19 And again, like I said, we have the Kuni case that
20 spells out. And I'm assuming you've seen the quotes that are
21 in there. They're pretty clear. That when you have an issue
22 like we have here where Ms. Connell's already deceased. So we
23 have a -- we can't also locate the 706 because the IRS hasn't
24 retained a copy. The preparer of the 706 hasn't retained a
25 copy. We have spoliation of evidence.

1 So we are at a severe disadvantage for being able to
2 rebut the assertions that Ms. Ahern is making other than what
3 we've already provided, which is --

4 THE COURT: If there's spoliation of evidence it wouldn't
5 have been by Ms. Ahern. I mean, it's just a lapse of time.
6 It's not something that she --

7 MR. POWELL: Well, Miss -- if -- well, my point is if Ms.
8 Ahern had brought this in a timely manner, and specifically if
9 she had brought this when Ms. Connell had the ability to
10 rebut --

11 THE COURT: Doesn't that get back to this whole point of
12 claim preclusion then? Why didn't we litigate this four years
13 ago?

14 MR. POWELL: Exactly. Why did no -- it wasn't raised
15 four years ago. There was still 65/35 four years ago.

16 THE COURT: Right.

17 MR. POWELL: There was 65/35 up until June. Then the
18 plug is pulled by Ms. Ahern who says, I've always been
19 entitled to a hundred percent of it. I just never told any of
20 you apparently that I felt this way and had these rights.

21 I mean, this is analogous to again, a homeowner who
22 says, you're encroaching on my property by 30 feet. I've
23 known for 30 years but I'm telling you now. Well, too late.

24 THE COURT: You're about to talk me into reconsidering my
25 -- Mr. Mugan's motion. Because what you're saying basically

1 is that we should have known this and it should have all been
2 litigated when Ms. Connell was still alive. And you know, Ms.
3 Ahern didn't tell us and so, you know, it should have been
4 litigated four years ago. You know --

5 MR. POWELL: But I'm not sure how that would be on my
6 client's burden when Ms. Ahern is the trustee and Ms. Ahern is
7 still doing a 65/35 split that whole time.

8 THE COURT: Okay. So it's her fault that it didn't --

9 MR. POWELL: How can my client anticipate --

10 THE COURT: -- we didn't get litigate -- this didn't get
11 litigated nine years ago when maybe I don't know if Ms.
12 Connell was competent to -- I don't know what condition she
13 was in at the end of her life.

14 MR. POWELL: Oh, well, she was still -- but my point
15 being is if you're going to make an argument of saying, you're
16 not entitled to the 65 percent; I was always entitled to it.
17 Why was this not done during Mrs. Connell's lifetime so Ms.
18 Connell could have responded to it? Ms. Connell was a trustee
19 as well.

20 THE COURT: Right.

21 MR. POWELL: Not just a beneficiary. Again, they were --
22 since 1980 they were both co-trustees.

23 THE COURT: Uh-huh.

24 MR. POWELL: So again, Ms. Ahern's point is since day one
25 I was always entitled to a hundred percent of the income. Ms.

1 Connell was never entitled to a red cent. And then following
2 her passing Jacqueline and her sister were never entitled to
3 that.

4 So again, we have a situation where somebody is
5 raising an argument that nobody's aware of existed until June
6 essentially when the --

7 THE COURT: And so she should now be foreclosed from
8 raising it just because while her step -- her I guess adopted
9 mother, step-mother was living she let her have the 65
10 percent.

11 MR. POWELL: Uh-huh, supposedly.

12 THE COURT: Now she should be precluded --

13 MR. POWELL: From arguing that -- right, exactly.

14 THE COURT: -- that she was in fact entitled to that 65
15 percent?

16 MR. POWELL: Exactly, exactly. We have -- again, we have
17 33 years of a 65/35. Only recently do we have the assertion,
18 no. I was always entitled to a hundred percent. The only
19 evidence we have left is a Texas estate tax return which shows
20 a 65/35 allocation.

21 THE COURT: Uh-huh, okay.

22 MR. POWELL: So we -- the spoliation is the fact that we
23 can't offer any testimony from Mrs. Connell, the other co-
24 trustee to say no. This was all done properly. They're
25 trying to basically assert that as was done on the Texas

1 return, which again is the only evidence we have left because
2 the 706 can't be found, that somehow --

3 THE COURT: Well, spoliation really just raises a
4 rebuttal presumption. So it doesn't necessarily mean that
5 judgment would be granted.

6 MR. POWELL: Sure.

7 THE COURT: It just means that at trial --

8 MR. POWELL: Sure.

9 THE COURT: -- you know, if you raise that there's been
10 spoliation that somehow I guess would be attributable --

11 MR. POWELL: Well, and --

12 THE COURT: -- to Ms. Ahern.

13 MR. POWELL: Yeah.

14 THE COURT: And which I'm kind of not seeing that, but
15 you know, it could be. I mean --

16 MR. POWELL: Well --

17 THE COURT: -- it wasn't really briefed. So okay.

18 MR. POWELL: Well, the Kuni case basically says is that a
19 critical factor in determining whether laches should apply is
20 whether there's a disadvantage of basically the injured
21 party --

22 THE COURT: Right.

23 MR. POWELL: -- which would be my client.

24 THE COURT: Sure.

25 MR. POWELL: And we can't offer any rebutting evidence

1 from Mrs. Connell as to what the realities of the situation
2 were. And that's a huge factor in Kuni and also many of the
3 other laches cases that said that if a key witness cannot
4 present their testimony that's a huge factor that has to be
5 considered by the Court --

6 THE COURT: Okay, got it.

7 MR. POWELL: -- because that's the damage so.

8 THE COURT: Mr. Mugan.

9 MR. MUGAN: Thank you, Your Honor. Talk about the
10 injunction. I'll just respectfully remind you that we were
11 here in November. We went through this. You basically issued
12 an order saying that my client as trustee, there was no
13 dispute that she was entitled to 35 percent; she could have
14 that. The 65 percent as trustee she had to hold until this
15 matter was --

16 THE COURT: Right.

17 MR. MUGAN: -- going to be heard in a couple months. And
18 nothing can be more fair than that. You're treating both
19 sides equally. When the final judgment is rendered the
20 money's going to be there whoever wins. And nobody has the
21 use or enjoyment in the interim.

22 Like we said in our objection, it's like trying to
23 argue again the merits of the case and we're not there yet.
24 You found that we have to have an evidentiary hearing. And if
25 you look at the requirements for an injunction they have to

1 prove irreparable harm, compensatory damages are not adequate
2 remedy. And a showing of reasonable probability of success.
3 They haven't shown any of those.

4 And they have to show all three. If they fail on
5 any of them then they're not entitled to an injunction.
6 Basically you've already issued an injunction regarding the 65
7 percent. There's no proof of irreparable harm. We're talking
8 about dollars here.

9 THE COURT: Right.

10 MR. MUGAN: That's adequate compensation. We're not
11 talking about blowing up a building that can't be replaced, or
12 the sale of real estate that's irreplaceable. We're talking
13 about dollars. That's adequate compensation.

14 THE COURT: And since it's not even like an asset that
15 would fluctuate like in the stock market. It's oil lease
16 money. It's --

17 MR. MUGAN: Yeah, it's oil.

18 THE COURT: It's revenue from oil leases.

19 MR. MUGAN: Right.

20 THE COURT: It's cash coming in.

21 MR. MUGAN: And the last thing is the reasonable
22 probability of success. We don't think they've shown that.
23 And we went into great detail as to why.

24 Laches, let's talk about laches. Laches work both
25 ways. If you recall Marjorie died in 2009.

1 THE COURT: Uh-huh.

2 MR. MUGAN: And they're claiming that Marjorie in her
3 last will and testament exercises general power of appointment
4 as to the 65 percent. And it went to a separate and distinct
5 trust called the MTC Living Trust.

6 And they cite 163.385 about not having to, you know,
7 deed it out, not having to divide it. Well, if you look at
8 163.383 that's applicable when you're talking about a trust or
9 trusts created by a single instrument. Once she died we're
10 talking about two separate trusts, two separate documents.
11 One created way back in '72. And now a separate and distinct
12 trust in 2009.

13 So you know, they should have deeded out that at
14 that point, the 65 percent. And it was never done. Also they
15 make in their pleadings they talk in detail about the oil --
16 apache oil and gas leases in 2012 and how Jacqueline was
17 intimately involved in blah, blah, blah. And how she had
18 professionals helping her. And how they had Eleanor, my
19 client as trustee sign all the new leases as the sole lessor
20 as trustee.

21 Well, if they had 65 percent, if MTC Living Trust
22 had 65 percent interest they would -- Jackie as trustee of
23 that trust would have been legally required to sign those
24 leases. And they never did. They only had Eleanor. And that
25 speaks volumes of not only Jackie's belief, but also the

1 professionals that she employed.

2 The division orders. You go back years and years.
3 All of the division orders from Apache and the other oil
4 companies, they don't use the employer ID number, the federal
5 ID number for trust number three. They use trust number two.
6 And again, in 2009 at the latest that should have been
7 changed. And Jackie was intimately involved. And she's the
8 trustee, the sole trustee of MTC Living Trust. And she's also
9 one of the two primary beneficiaries.

10 And so when you talk about laches it works both
11 ways. And Marjorie really is the only one who can say what
12 the deal was. And Marjorie is dead. And it's just as much to
13 our detriment if not more than to theirs.

14 And when you talk about laches and detrimental
15 reliance you have to talk about first offer and acceptance.
16 And there really has been no proof of any offer and
17 acceptance. What detrimental reliance and laches is, is
18 really a substitute for consideration. And we kind of skip
19 over those first two elements and alls we talk about is
20 consideration.

21 Well, even if it's a substitute for consideration
22 we're talking about oil and gas rights and an undivided
23 interest in real estate that cannot be performed within one
24 year.

25 So under the statute of frauds it would have had to

1 be in writing. You're dealing with real estate. And you're
2 dealing with a situation that cannot be performed with one
3 year.

4 So laches works both ways. And you already decided
5 last time that we needed an evidentiary hearing in this
6 matter.

7 THE COURT: Okay.

8 MR. MUGAN: Thank you.

9 THE COURT: Mr. Powell, briefly.

10 MR. POWELL: Your Honor, I -- the crux of this, we're
11 acting again as though somehow this -- that Eleanor just out
12 of the blue decided to give the 65/35. I would point to
13 again, on the Texas estate tax return the only evidence we
14 still have left because of this huge passage of time, is
15 schedule B2. It says specifically the language coming up with
16 the 65/35 split on this return. Marital bequest.

17 As pointed out trust number three was a survivor's
18 trust but it also had the marital trust as well. Back when
19 this trust was created and back when Mr. Connell died there
20 was no thing as -- there was no such thing as the Q Tip trust.

21 So -- and the trust itself says, I want to max out
22 the marital deduction --

23 THE COURT: Okay. When I started out -- when you started
24 Mr. Powell --

25 MR. POWELL: Yeah.

1 THE COURT: -- the question was what's changed; didn't we
2 already argue all of this? And you said well --

3 MR. POWELL: Here's --

4 THE COURT: -- the release issues hadn't been addressed.
5 And to me they all sound like they really were more in support
6 of Mr. Mugan's motion on claim preclusion. That she shouldn't
7 have changed this. Why wasn't it litigated previously? To me
8 this is the whole point why we have to have this evidentiary
9 hearing is because we don't have any other way. I don't
10 understand how we could possibly do this short of an
11 evidentiary hearing. Because as you said, some of the
12 evidence is gone, the written documentary evidence would be
13 gone.

14 Through nobody -- I'm not saying it's anybody's
15 fault, but it just -- this goes back to '72. This is like 40
16 years old.

17 MR. POWELL: Which -- and that again went to our point of
18 why we think again laches should be applicable here because of
19 the fact that this -- and if I could read you just real
20 quickly --

21 THE COURT: Sure.

22 MR. POWELL: -- the passage directly from Ms. Ahern's
23 response. Which did you have the opportunity to read our --

24 THE COURT: Yeah.

25 MR. POWELL: -- response to their --

1 THE COURT: Oh, yeah. I've got it right here.

2 MR. POWELL: okay.

3 THE COURT: Yeah.

4 MR. POWELL: This is the assertion in their words. "When
5 W.N. Connell passed away Marjorie T. Connell as a surviving
6 trustor and trustee of the trust began paying herself 65
7 percent of the Upton County Texas oil right income.

8 THE COURT: Uh-huh.

9 MR. POWELL: Eleanor consulted an attorney and was
10 advised that although Eleanor was entitled to all of the Upton
11 County Texas Oil right income, if she asserted her rights to
12 all the income against Marjorie at the time it would in all
13 likelihood result in Marjorie disinherit Eleanor when
14 Marjorie died.

15 The advice essentially was to take less now so you
16 could inherit all of Marjorie's estate later. Although
17 Eleanor knew that she, Eleanor, was entitled to a hundred
18 percent of the Upton County Texas Oil income. She consented
19 to Marjorie receiving the 65 percent. The advice of the
20 attorney and Eleanor's love and respect for and appreciation
21 of Marjorie T. Connell as her mother led to her acquiescence.

22 How is this not laches if you sleep on your rights,
23 you don't assert anything different? And I'm not sure how my
24 client could have expected anything different than the status
25 quo to remain in effect. How did she know?

1 Her evidence is she's got this Texas estate tax
2 return showing 65/35.

3 THE COURT: Okay. But they can all come in and testify,
4 Mr. Powell.

5 MR. POWELL: Okay.

6 THE COURT: That's -- I think that's what we said back in
7 November is that this is a factual dispute. It's going to
8 require taking the testimony. And in the meantime money's
9 being held. It's just cash. It's not some sort of an estate,
10 or something -- it's being just held. If it's theirs they get
11 the money. If it's not theirs Ms. Ahern gets the money.

12 MR. POWELL: Okay.

13 THE COURT: I'm just not understanding why we can't do
14 this in February when -- as was planned originally.

15 MR. POWELL: It was planned originally --

16 THE COURT: What has changed?

17 MR. POWELL: -- but it was also left that we could
18 petition for any other relief because it was deemed -- it was
19 deemed essentially -- and Mr. Mugan argued that we didn't
20 plead enough of the issues. That we only pled for a
21 declaratory judgment.

22 THE COURT: Right. Well, I just think that at this point
23 in time this is one of the issues that would be appropriately
24 determined at the hearing. And I don't think it's any
25 different --

1 MR. POWELL: The laches issue, okay.

2 THE COURT: -- it's any different from any of the other
3 issues that are going to be --

4 MR. POWELL: Okay.

5 THE COURT: -- determined at the hearing. It's --

6 MR. POWELL: Okay.

7 THE COURT: It's just one of the claims that goes to, is
8 she barred from making this change --

9 MR. POWELL: Okay.

10 THE COURT: -- by the doctrine of laches.

11 MR. POWELL: Okay.

12 THE COURT: I mean, it's now --

13 MR. POWELL: I understand.

14 THE COURT: -- I think it's something that's part of our
15 February trial.

16 MR. POWELL: Okay, okay.

17 THE COURT: So --

18 MR. POWELL: Understood.

19 THE COURT: -- when I say I'm not going to grant it today
20 it's not that I'm saying you --

21 MR. POWELL: Sure.

22 THE COURT: -- aren't entitled to pursue it --

23 MR. POWELL: Sure.

24 THE COURT: -- as a claim. It's just that I can't grant
25 preliminary relief. To me this is part of the whole

1 evidentiary hearing that's coming up in a month. I just
2 didn't see what the change was in circumstances.

3 MR. POWELL: Okay.

4 THE COURT: Now that I understand that you're just --
5 this is an issue you want -- you would have liked me to grant
6 today, but it's just an issue to get as part of the ultimate
7 case it's one of the claims is that she's barred by the
8 doctrine of laches.

9 And now I understand -- that's how I understand it.

10 MR. POWELL: Okay.

11 THE COURT: That's how I view it. And I think it's
12 something that has to be determined at the same time we
13 determine the other issues --

14 MR. POWELL: Understood.

15 THE COURT: -- in the pending evidentiary hearing in
16 February.

17 MR. POWELL: Okay, understood.

18 THE COURT: So denying both petitions. It's without
19 prejudice because if for some reason something develops
20 through the evidentiary hearing that one of the other claims
21 has merit, either that this is precluded or that there's
22 laches then, you know, we can rule on it at that time, but
23 that's when I think it all has to be part of the evidentiary
24 hearing.

25 MR. POWELL: Understood. Thank you, Your Honor.

1 MR. MUGAN: I'm not trying to be a smart aleck, Your
2 Honor. But I'm just asking if the Court wishes to reconsider
3 its ruling in light of what he said regarding the claim
4 preclusion.

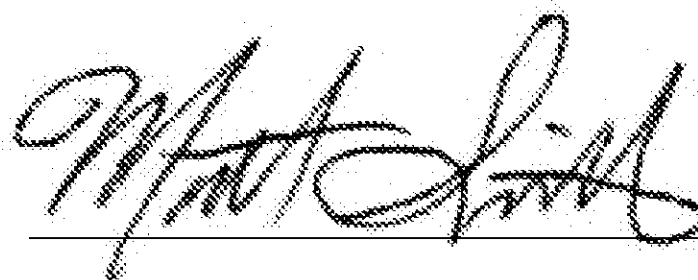
5 THE COURT: I appreciate that, Mr. Mugan. And as I said,
6 you know, he almost talked me into reconsidering it. But now
7 that I understand that he's just raising this issue as a
8 potential claim or theory for determination at the time of
9 trial then I think that's where we'll leave it. We'll
10 consider all these issues at the trial.

11 MR. MUGAN: Thank you, Your Honor.

12 THE COURT: Okay, thanks.

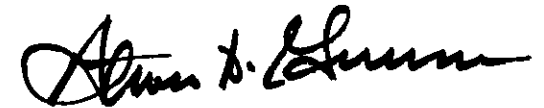
13 [Proceedings Concluded at 9:36 a.m.]
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.

A handwritten signature in black ink, appearing to read 'Matthew Smith', is written over a horizontal line.

Matthew Smith

Certified Transcriber



CLERK OF THE COURT

ANS

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Attorneys for Trustee ELEANOR CONNELL HARTMAN AHERN

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of

THE W. N. CONNELL AND MARJORIE T. CONNELL

LIVING TRUST,

Dated May 18, 1972

Case No. P-09-066425-T

Dept. No. XXVI (26)

An Inter Vivos Irrevocable Trust.

**ANSWER OF TRUSTEE ELEANOR C. AHERN TO JACQUELINE M. MONTOYA'S
PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF
TRUST ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(e), AND NRS 164.033(1)(a)
AND COUNTERCLAIMS AGAINST JACQUELINE M. MONTOYA**

COMES NOW ELEANOR C. AHERN, a/k/a ELEANOR CONNELL HARTMAN AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, by and through her counsel of record, JOHN R. MUGAN, Esquire, and MICHAEL D. LUM, Esquire, of the law firm of JEFFREY BURR, LTD., and hereby submits this Answer to Jacqueline M. Montoya's Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(e) and NRS 164.033(1)(a) And Counterclaims Against Jacqueline M. Montoya, and in support thereof states:

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ANSWER

1. The surface real estate located in Upton County, Texas, and the oil, gas and mineral interests on and under such real estate and severed oil, gas and mineral interest in other acreage in Upton County, Texas (the "Upton County, Texas, Oil rights" or the "royalties and rent") were originally the sole and separate property of W. N. CONNELL.

2. The Upton County, Texas, Oil rights or any part thereof were never allocated to Trust No. 3.

3. The Upton County, Texas, Oil rights became an asset of Trust No. 2 by default pursuant to the language of the W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972 (the "TRUST"). See Subparagraph 4 of Paragraph C of the TRUST agreement.

4. Subsequent to the death of MARJORIE T. CONNELL on May 1, 2009, NRS 163.385 is not applicable as the TRUST and the MTC LIVING TRUST were not created by a single instrument.

5. The TRUST agreement should be construed to require that an amount equal to the revenue from the Upton County, Texas, Oil rights be distributed to ELEANOR C. AHERN, a/k/a ELEANOR CONNELL HARTMAN AHERN ("ELEANOR") during her lifetime.

AFFIRMATIVE DEFENSES

As and for separate affirmative defenses, ELEANOR hereby allege as follows:

FIRST AFFIRMATIVE DEFENSE

There is lack of subject matter jurisdiction by this Court regarding Jacqueline M. Montoya's Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(e) and NRS 164.033(1)(a) (the "Petition").

SECOND AFFIRMATIVE DEFENSE

Petitioner Jacqueline M. Montoya (the "Petitioner") fails to state an action upon which relief

1 can be granted against Defendants.

2 **THIRD AFFIRMATIVE DEFENSE**

3 The claims of Petitioner set forth in her Petition are barred by the doctrine of claim
4 preclusion.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 The claims of Petitioner set forth in her Petition are barred by the doctrine of issue
7 preclusion.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 The claims of Petitioner set forth in her Petition are barred by the doctrine of laches.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 The claims of Petitioner set forth in her Petition are barred by the doctrine of unclean hands
12 on the part of Petitioner.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 The claims of Petitioner set forth in her Petition are barred by the doctrine of detrimental
15 reliance.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 The claims of Petitioner set forth in her Petition are barred by the doctrine of promissory
18 estoppel.

19 **NINTH AFFIRMATIVE DEFENSE**

20 Any damages which Petitioner may have sustained by reason of the allegations of the
21 Petition were proximately caused, in whole or in part, by sets of persons other than ELEANOR and
22 with whom ELEANOR had no legal connection.

23 **TENTH AFFIRMATIVE DEFENSE**

24 No actual, justifiable controversy exists between Petitioner and ELEANOR, and thus, the
25 Petitioner must be dismissed as to these Defendants.

26 **ELEVENTH AFFIRMATIVE DEFENSE**

27 Petitioner, by her own conduct or failure to act or otherwise, is estopped from making any
28 claim against ELEANOR.

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TWELTH AFFIRMATIVE DEFENSE

Petitioner has waived, by conduct or failure to act or otherwise, any claim against ELEANOR.

THIRTEENTH AFFIRMATIVE DEFENSE

By virtue of the acts, conduct, mismanagement, wrongdoing, fraud, undue influence, illegality and/or omissions to act of Petitioner under the circumstances, ELEANOR is released and discharged from any liability whatsoever to Petitioner, which liability is expressly denied.

FOURTEENTH AFFIRMATIVE DEFENSE

There is no privity of contract between Petitioner and ELEANOR.

FIFTEENTH AFFIRMATIVE DEFENSE

ELEANOR asserts that she has performed and fully discharged all obligations owed to Petitioner including meeting the requisite standard of care to which Petitioner was entitled, if any obligation existed at all.

SIXTEENTH AFFIRMATIVE DEFENSE

The loss, injuries, damages, costs and attorneys' fees, if any, suffered by Petitioner were the result of her own acts, wrongdoing, fraud, undue influence and/or her omissions to act.

SEVENTEENTH AFFIRMATIVE DEFENSE

Petitioner has failed to cure procedural prerequisites to the institution and maintenance of this lawsuit, which precludes the ability of the Petitioner to institute or maintain this cause of action.

EIGHTEENTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the applicable statutes of limitations.

NINETEENTH AFFIRMATIVE DEFENSE

Petitioner has failed to satisfy conditions precedent to bringing any action against ELEANOR.

TWENTIETH AFFIRMATIVE DEFENSE

If ELEANOR has failed to perform a contractual obligation owed to Petitioner, if any contractual obligation existed at all, there existed a valid excuse for such nonperformance, if any required performance existed at all.

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 ELEANOR acted in good faith in all of her dealings with Petitioner.

3 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

4 ELEANOR lacked the requisite specific intent necessary for Petitioner to sustain her claims
5 against ELEANOR.

6 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

7 ELEANOR asserts that at all times its activities relating to this matter she has been in full
8 compliance with all applicable rules, regulations, ordinances, statutes and Orders of the Court and
9 that has acted in all respects in a careful, reasonable and prudent manner.

10 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

11 Damage suffered by Petitioner, if any exist at all, are a result of her contributory negligence
12 and/or her comparative fault, and Petitioner is barred from recovery on such grounds

13 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

14 Petitioner has failed to mitigate damages, if any such damages exist at all.

15 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

16 The claims of Petitioner set forth in her Petition are barred by the Statute of Frauds.

17 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

18 The claims of Petitioner set forth in her Petition are barred by failure of consideration.

19 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

20 The issues raised by Petitioner in her Petition are not ripe.

21 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

22 ELEANOR has been forced to retain counsel to defend against the Petition, and Petitioner is
23 entitled to an award of reasonable attorneys' fees.

24 **THIRTIETH AFFIRMATIVE DEFENSE**

25 All possible affirmative defenses may not have been alleged herein as sufficient facts were
26 not available after reasonable inquiry upon the filing of this pleading. Therefore, ELEANOR
27 reserves the right to amend this pleading, including adding affirmative defenses, based upon
28 discovery, review of document, and development of evidence in this case.

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16. The actions of Petitioner in filing her Petition and/or in contacting the surface tenant and oil companies as noted above are violations of the no contest provisions of the TRUST.

PRAAYER

WHEREFORE, ELEANOR C. AHERN, a/k/a ELEANOR CONNELL HARTMAN AHERN, as Trustee of THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, prays the Court to:

1. Deny Petitioner JACQUELINE M. MONTOYA's Petition For Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant To NRS 30,040, NRS 153.031(1)(e), and NRS 164.033(1)(a) and dismiss the same with prejudice;
2. In the alternative, construe the terms of THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972 to mean that ELEANOR C. AHERN, a/k/a ELEANOR CONNELL HARTMAN AHERN is the sole beneficiary during her life of the Upton County, Texas surface real estate, oil, gas, and mineral interest on and under such real estate and severed oil, gas and mineral interest in other acreage in Upton, County, Texas, and that such construction shall apply prospectively;
3. Enter judgment against Petitioner JACQUELINE M. MONTOYA for intentional interference with contractual relations and award all monetary damages incurred as a result thereof, including but not limited to general damages, actual damages, compensatory damages, pecuniary damages, and consequential damages in an amount in excess of Ten Thousand Dollars (\$10,000.00) including prejudgment and post judgment interest;
4. Enter judgment against Petitioner JACQUELINE M. MONTOYA for punitive damages;
5. Enter judgment against Petitioner JACQUELINE M. MONTOYA for interest, fees, costs, expenses, attorneys' fees, loss of use of monies and property, and expert witness fees;
6. Enforce the no-contest clause of the TRUST against JACQUELINE MONTOYA; and

///

1 7. For such other and further relief as this Court deems appropriate.

2
3 DATED: January 31, 2014.

4 JEFFREY BURR, LTD.

5 By: 

6 JOHN R. MUGAN, ESQUIRE

7 Nevada Bar No. 10690

8 MICHAEL D. LUM, ESQUIRE

9 Nevada Bar No. 12997

10 2600 Paseo Verde Parkway, Suite 200

11 Henderson, Nevada 89074

12 Attorneys for Trustee ELEANOR CONNELL

13 HARTMAN AHERN

VERIFICATION

STATE OF NEVADA)
): ss
COUNTY OF CLARK)

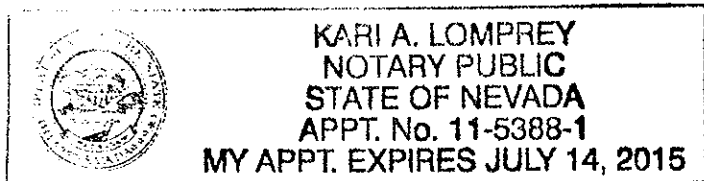
ELEANOR CONNELL HARTMAN AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, being first duly sworn, deposes and says: That I am the Defendant herein; that I have read the above and foregoing Objection to Jacqueline M. Montoya's Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(e) and NRS 164.033(1)(a) And Counterclaims Against Jacqueline M. Montoya; that the same is true of my own knowledge, except for matters therein stated on information and belief, and as for those matters, I believe it to be true.

Eleanor Connell Hartman Ahern
ELEANOR CONNELL HARTMAN AHERN

SUBSCRIBED and SWORN to before me
this 16 day of February, 2014.

Kari A. Lomprey

NOTARY PUBLIC



CERTIFICATE OF MAILING

I hereby certify that on the 10 day of February, 2014, I did email to JOSEPH J. POWELL, Esquire, as indicated below, and I did deposit in the U.S. Post Office at Las Vegas, Nevada, postage prepaid, a copy of the above and foregoing Answer to Jacqueline M. Montoya's Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(e) and NRS 164.033(1)(a) And Counterclaims Against Jacqueline M. Montoya, to each person as indicated below, addressed as follows:

Joseph J. Powell
The Rushforth Firm. Ltd.
P.O. Box 371655
Las Vegas, NV 89137-1655
probate@rushforthfirm.com


An employee of JEFFREY BURR, LTD.

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| 2 | Email of Texas Legal Counsel of Jacqueline M. Montoya dated November 14, 2013 to Apache Corporation | 14 |

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EXHIBIT 1
Demand Letters of Texas Legal Counsel of Jacqueline M. Montoya dated September
30, 2013 to Apache Corporation, Plains Marketing, L.P., and Drag A Cattle
Company, LLC.

STUBBEMAN, McRAE, SEALY, LAUGHLIN & BROWDER, INC.
ATTORNEYS AT LAW

FASHEH CENTER - TOWER TWO
550 WEST TEXAS AVENUE, SUITE 800
MIDLAND, TEXAS 79701
432.682.1616
FACSIMILE 432.682.4584
www.stubbemanlawfirm.com

SEAN GUERRERO
Direct Dial 432.583.0243
ALSO LICENSED IN NEW MEXICO
sguerrero@stubbemanlawfirm.com

September 30, 2013

Via facsimile (713) 296-6454
and CMRRR7003 3110 0002 5180 6829
Apache Corporation
Attn: Division Order Dept.
2000 Post Oak Blvd, Suite 100
Houston, Texas 77056

Re: William and Marjorie Connell Living Trust, Marjorie Connell and Eleanor
Hartman, Co Trustees

Owner Numbers: 47052
45572

To Whom It May Concern:

I write on behalf of our client, Jaqueline M. Montoya, individually and in her capacity as trustee of the MCT Living Trust, Plaintiff in Cause No. P-09-066425-T; In the Matter of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972. The lawsuit referenced concerns oil and gas royalty and interest payments into the W. N. Connell and Marjorie T. Connell Living Trust, Eleanor Ahern, Trustee. I enclose a copy of the filed petition and confirmation of filing for your reference. We will follow up with a file-marked copy of the petition once we have received it.

Due to the dispute regarding the distribution of payments, a portion of which has been made by your company, we request that Apache Corporation hold in suspense all payments to the W. N. Connell and Marjorie T. Connell Living Trust until this lawsuit has been resolved. We request that you take action immediately so that no further payments are distributed until this suit is resolved. Please let me know if you have any questions. We appreciate your cooperation and look forward to working with you.

Very truly yours,


Sean Guerrero

13 OCT 3 PM 4:46

SMG:mg
Enclosures



STUBBEMAN, McRAE, SEALY, LAUGHLIN & BROWDER, INC.

ATTORNEYS AT LAW

FASKEN CENTER • TOWER TWO
550 WEST TEXAS AVENUE, SUITE 800
MIDLAND, TEXAS 79701
432.682.1616
FACSIMILE 432.682.4884
www.stubbemanlawfirm.com

SEAN GUERRERO
Direct Dial: 432.688.0242
ALSO LICENSED IN NEW MEXICO
sguerrero@stubbemanlawfirm.com

September 30, 2013

Via facsimile (713) 646-4571
and CMRRR#7003 3110 0002 5180 6836

Plains Marketing, L.P.
Attn: Division Orders Dept.
P.O. Box 4648
Houston, Texas 77210

Re: William and Marjorie Connell Living Trust, Marjorie Connell and Eleanor
Hartman, Co Trustees

Owner Numbers: 0782216
0488845

To Whom It May Concern:

I write on behalf of our client, Jaqueline M. Montoya, individually and in her capacity as trustee of the MCT Living Trust, Plaintiff in Cause No. P-09-066425-1; *In the Matter of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972*. The lawsuit referenced concerns oil and gas royalty and interest payments into the W. N. Connell and Marjorie T. Connell Living Trust, Eleanor Ahern, Trustee. I enclose a copy of the filed petition and confirmation of filing for your reference. We will follow up with a file-marked copy of the petition once we have received it.

Due to the dispute regarding the distribution of payments, a portion of which has been made by your company, we request that Plains Marketing hold in suspense all payments to the W. N. Connell and Marjorie T. Connell Living Trust until this lawsuit has been resolved. We request that you take action immediately so that no further payments are distributed until this suit is resolved. Please let me know if you have any questions. We appreciate your cooperation and look forward to working with you.

Very truly yours,


Sean Guerrero

SMG:mg
Enclosure

STUBBEMAN, McRAE, SEALY, LAUGHLIN & BROWDER, INC.

ATTORNEYS AT LAW

FASKEN CENTER • TOWER TWO
550 WEST TEXAS AVENUE, SUITE 800
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SEAN GUERRERO
Direct Dial: 432.688.0242
ALSO LICENSED IN NEW MEXICO
sguerrero@stubbemanlawfirm.com

September 30, 2013

Via facsimile (432) 682-4929
and CMRRR#7003 3110 0002 5180 6843

Drag A Cattle Company, LLC
c/o James Walton
414 W. Texas, Suite 310
Midland, Texas 79702

Re: W.N. and M.T. Connell Living Trust, M. Connell and E. Hartman, Trustees

To Whom It May Concern:

I write on behalf of our client, Jaqueline M. Montoya, individually and in her capacity as trustee of the MCT Living Trust, Plaintiff in *Cause No. P-09-066425-T; In the Matter of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972*. The lawsuit referenced concerns oil and gas royalty and interest payments into the W. N. Connell and Marjorie T. Connell Living Trust, Eleanor Ahern, Trustee. I enclose a copy of the filed petition and confirmation of filing for your reference. We will follow up with a file-marked copy of the petition once we have received it.

Due to the dispute regarding the distribution of payments, a portion of which has been made by your company, we request that Drag A Cattle Company hold in suspense all payments to the W. N. Connell and Marjorie T. Connell Living Trust until this lawsuit has been resolved. We request that you take action immediately so that no further payments are distributed until this suit is resolved. Please let me know if you have any questions. We appreciate your cooperation and look forward to working with you.

Very truly yours,



Sean Guerrero

SMG:mg
Enclosures

Cooper, Courtney

Subject: FW: Cause No. P-09-066425-T: In the Matter of the W. N. Connell and Marjorie T. Connell Living Trust
Attachments: 2013-09-27 Petition for Declaratory Judgment.pdf, W N & MARJORIE T CONNELL LIV TR-0004557202.pdf

From: Sean Guerrero [<mailto:sguerrero@stubbemanlawfirm.com>]
Sent: Thursday, October 10, 2013 9:31 AM
To: Cooper, Courtney
Subject: re: Cause No. P-09-066425-T: In the Matter of the W. N. Connell and Marjorie T. Connell Living Trust

Courtney,

Thank you for getting back to us. I have attached a file-marked copy of the petition for your records. I appreciate your help and will provide any other information you might need. If you will confirm when Apache places the royalty payments into suspense, I would also appreciate it. Please let me know if you have any questions.

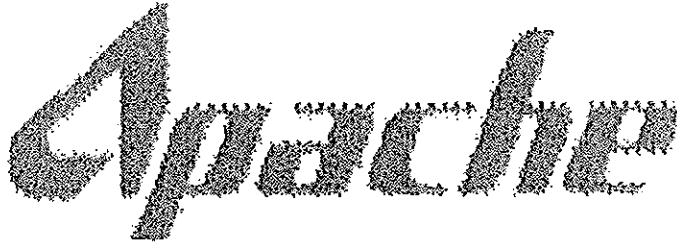
Thank you,

Sean Guerrero
Stubbeman, McRae, Sealy, Laughlin & Browder, Inc.
550 W. Texas, Suite 800
Midland, TX 79701
Phone: 432.682.1616
Fax: 432.682.4884
sguerrero@stubbemanlawfirm.com

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EXHIBIT 2
Email of Texas Legal Counsel of Jacqueline M. Montoya dated November 14, 2013
to Apache Corporation



Andrew M. (Andy) Taylor
Senior Counsel
Apache Corporation
2000 Post Oak Blvd., Suite 100
Houston, Texas 77056
(713) 296-7302 Direct
(713) 213-5546 Cell
(713) 296-7263 Fax

From: Sean Guerrero [<mailto:sguerrero@stubbemanlawfirm.com>]
Sent: Thursday, November 14, 2013 11:53 AM
To: Taylor, Andy
Cc: jmj@usaonline.net; Cooper, Courtney; Sloan, Thomas
Subject: RE: W.N. Connell and Marjorie T. Connell Living Trust

Dear Mr. Taylor,

I am in receipt of your email of this morning and appreciate the time and attention you have given our matter. In short, we do not believe that a release of any funds to Eleanor Ahern is appropriate at this time. We hope that some clarification of this matter will help you in your determination that royalty suspense is the appropriate action.

Ms. Ahern is the trustee of the W.N. Connell and Marjorie Trust (the "Trust"). Our clients are the primary beneficiaries, receiving, 65% of the Trust distributions. After 33 years of distribution in a 65%/35% split, Ms. Ahern determined last year that she was entitled to ALL Trust distributions, while our clients were entitled to none. As of June of this year, Ms. Ahern has reneged on her fiduciary duty altogether and refused payment to our clients. She has kept the royalty proceed from Apache, as well as all other oil and gas operators who make royalty payments to the Trust. As you know, those payments have been substantial in the past few years.

Ms. Ahern has no documentation to support her decision, and you will note that her attorneys have provided no proof that she is entitled to 100% of the Trust proceeds. I find it ironic that, although Ms. Ahern denies that she entitled to only a 35% distribution (which has been the status quo for 33 years), this is exactly what her attorneys have requested of you. Instead, we believe Ms. Ahern and her attorneys hope to fund their litigation with a portion of the Trust proceeds while denying our clients the same opportunity and "starving them out."

We have undertaken the lawsuit in Nevada to re-establish our clients' rights to the 65% distribution of the Trust and ultimately force Ms. Ahern out as Trustee. Our clients will file a second lawsuit regarding Ms. Ahern's breach of fiduciary duties, fraud and misappropriation of Trust funds. While this first lawsuit is intended to determine the appropriate distribution of the Trust, the bigger picture reflects that we intend to seek damages against Ms. Ahern for her theft. We are extremely concerned that Ms. Ahern has not only spent the money that she has withheld from our clients, but also 35% that she has received from the Trust. As a result of the litigation, and the likely substantial judgment that Ms. Ahern will be forced to pay, it is critical that all Trust proceeds remain untouched pending the outcome of these suits.

Under Texas Natural Resources Code Sec. 91.402(b), you have authority to withhold payment without interest when there is (1) a dispute concerning title that would affect distribution of payments; or (2) a reasonable doubt that the payee has clear title to the interest in the proceeds of production. The Trust is subject to your division order, and under Sec. 91.402(c)(1), the Trust has authorized Apache to suspend payment for production until the resolution of any title dispute or adverse claim asserted regarding the interest in production.

Ms. Ahern's attorneys have no basis to challenge your decision to put the interest payments in suspense, as the Texas Natural Resources Code applies to all proceeds derived from the sale of oil or gas production from an oil or gas well located in Texas. Further, they have not provide any documents which would allow you to split up an undivided royalty payment to the Trust. Short of a court order, I do not see who you can legally and arbitrarily allocate 35% of royalty payments to the Trustee of a trust and withhold 65% from the beneficiaries. Apache would be wise to await a court order on the subject rather than taking the word of Ms. Ahern's attorney.

We have a complicated suit regarding the Trust distribution pending, and we will have a second suit regarding Ms. Ahern's misappropriation of Trust assets filed in short order. As a result, we renew our request that Apache continue to hold all interest payments to the Trust in suspense. If Apache insists on making royalty payments to Ms. Ahern on a monthly basis, we then likewise request that Apache also make a 65% distribution to our clients every month.

I am happy to answer any questions you may have regarding the suit or the request for suspense of royalty payments. I look forward to working with you in resolving this matter.

Thank you,

Sean Guerrero
Stubbeman, McRae, Sealy, Laughlin & Browder, Inc.
550 W. Texas, Suite 800
Midland, TX 79701
Phone: 432.682.1616
Fax: 432.682.4884
sguerrero@stubbemanlawfirm.com

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

IN THE MATTER OF: THE W.N.
CONNELL AND MARJORIE T.
CONNELL LIVING TRUST, DATED
MAY 18, 1972,

ELEANOR C. AHERN A/K/A
ELEANOR CONNELL HARTMAN
AHERN,

Appellant,

vs.

JACQUELINE M. MONTOYA; AND
KATHRYN A. BOUVIER,

Respondents.

Supreme Court No.: 66231
Consolidated with: 6782, 68046
Electronically Filed
Nov 20 2015 03:55 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

District Court Case No.:
P-09-066425-T

Appeal from the Eighth Judicial
District Court, The Honorable Gloria
Sturman Presiding

APPELLANT'S APPENDIX

(VOLUME 3 OF 17)

(PAGES AA 442 - 672)

KIRK B. LENHARD, ESQ., Nevada Bar No. 001437
TAMMY BEATTY PETERSON, ESQ., Nevada Bar No. 005218
BENJAMIN K. REITZ, ESQ., Nevada Bar No. 13233
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106
Telephone: 702.382.2101
Facsimile: 702.382.8135

*ATTORNEYS FOR APPELLANT
ELEANOR CONNELL HARTMAN AHERN*

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| Opposition To Eleanor C. Ahern's Motion To Dismiss Petition For Declaratory Judgment For Failure To State A Claim Upon Which Relief Can Be Granted; And, Countermotion Of Kathryn A. Bouvier And Jacqueline M. Montoya For Summary Judgment On Petition For Declaratory Judgment, For Damages And Assessment Of Penalties, And For Other Relief | 12/23/14 | 8 | AA 1757-1849 |
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| Opposition To Motion In Support Of Award Of Attorney's Fees And Costs | 05/04/15 | 16 | AA 3479-3497 |
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| Order: Re Pending Motions And Scheduling | 07/07/14 | 7 | AA 1597-1604 |
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| Petition For Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS 153.031(1)(E), And NRS 164.033(1)(A) | 09/27/13 | 1 | AA 64-200 |
| Petition For Determination Of Construction And Interpretation Of Language Relating To Trust No. 2 | 03/27/14 | 5 | AA 1130-1146 |
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| Petition To Compel Trustee To Distribute Accrued Income And Future Income Received From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches | 12/03/13 | 2 | AA 277-299 |
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| Transcript Of Proceedings Hearing On Petition For Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS 153.031(1)(E), And NRS 164.033(1)(A) 11/12/13 | 12/06/13 | 2 | AA 207-276 |
| Transcript Of Proceedings Motion For Attorney Fees 05/13/15 | 06/12/15 | 17 | AA 3537-3569 |
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| Verification For Petition For Construction And Effect Of Probate Court Order | 03/26/14 | 5 | AA 1128-1129 |
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| Verification For Petition For Determination Of Construction And Interpretation Of Language Relating To Trust No. 2 | 03/27/14 | 5 | AA 1147-1148 |

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

IN THE MATTER OF: THE W.N.
CONNELL AND MARJORIE T.
CONNELL LIVING TRUST, DATED
MAY 18, 1972,

ELEANOR C. AHERN A/K/A
ELEANOR CONNELL HARTMAN
AHERN,

Appellant,

vs.

JACQUELINE M. MONTOYA; AND
KATHRYN A. BOUVIER,

Respondents.

Supreme Court No.: 66231

Consolidated with: 67782, 68046

District Court Case No.:
P-09-066425-T

Appeal from the Eighth Judicial
District Court, The Honorable Gloria
Sturman Presiding

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRAP 25(c) and (d), I caused a true and correct copy of the foregoing **APPELLANT’S APPENDIX (Volume 3 of 17) (Pages AA 442-672)** by using the Court’s Electronic Filing System on November 20, 2015, upon the following:

WHITNEY B. WARNICK, ESQ.
ALBRIGHT, STODDARD,
WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, NV 89106
Attorneys for Kathryn A. Bouvier

JOSEPH J. POWELL, ESQ.
THE RUSHFORTH FIRM, LTD.
P.O. Box 371655
Las Vegas, NV 89137-1655
*Attorneys for Jacqueline M. Montoya
and Kathryn A. Bouvier*

I hereby certify that on November 20, 2015, I served a copy of this document by mailing a true and correct copy, postage prepaid, via U.S. Mail, addressed to the following:

MICHAEL K. WALL, ESQ.
HUTCHISON & STEFFEN, LLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Fredrick P. Waid, Court-
appointed Trustee

/s/ Erin Parcels
an employee of Brownstein Hyatt Farber Schreck, LLP

Article Fourteen

My Trustee's Powers

Section 14.01 Introduction to Trustee's Powers

Except as otherwise specifically provided in this agreement, my Trustee may exercise, without prior approval from any court, all the powers conferred by this agreement and any powers conferred by law, including, without limitation, those powers set forth under the common law or statutory law of the State of Nevada or any other jurisdiction whose law applies to this trust. The powers conferred upon my Trustee by law, including those powers conferred by Nevada Revised Statutes, Sections 163.265 to 163.410, shall be subject to any express limitations or contrary directions contained in this agreement.

My Trustee shall exercise these powers in the manner my Trustee determines to be in the best interests of the beneficiaries. My Trustee shall not exercise any of its powers in a manner that is inconsistent with the right of the beneficiaries to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee of a trust may have duties and responsibilities in addition to those described in this agreement. I encourage my Trustee to obtain appropriate legal advice if my Trustee has any questions concerning its duties and responsibilities as Trustee.

Section 14.02 Execution of Documents by My Trustee

My Trustee may execute and deliver any and all instruments in writing that my Trustee considers necessary to carry out any of the powers granted in this agreement.

Section 14.03 Investment Powers in General

My Trustee may invest in any type of investment that my Trustee determines is consistent with the investment goals of my trust, whether inside or outside the geographic borders of the United States of America and its possessions or territories, taking into account my trust's overall investment portfolio.

Without limiting my Trustee's investment authority in any way, I request that my Trustee exercise reasonable care and skill in selecting and retaining trust investments. I also request that my Trustee take into account the following factors in choosing investments for my trust:

- The potential return from the investment, both in the form of income and appreciation;

- The potential income tax consequences of the investment;

- The investment's potential for volatility; and

- The role the investment will play in the trust's portfolio.

I request that my Trustee, in arranging the investment portfolio of the trust, also consider the possible effects of inflation or deflation, changes in global and U.S. economic conditions, transaction expenses, and the trust's need for liquidity.

My Trustee may delegate its discretion to manage trust investments to any registered investment adviser or corporate fiduciary.

Section 14.04 Banking Powers

My Trustee may establish bank accounts of any type in one or more banking institutions that my Trustee may choose. My Trustee may open accounts in the name of my Trustee (with or without disclosing fiduciary capacity) or in the name of the trust. When an account is in the name of the trust, checks on that account and authorized signatures need not disclose the fiduciary nature of the account or refer to any trust or Trustee.

An account from which my Trustee makes frequent disbursements need not be an interest bearing account. My Trustee may authorize withdrawals from an account by check, draft or other instrument or in any other manner.

Section 14.05 Business Powers

My Trustee is authorized to serve as an officer, director, manager, or in any other capacity of any proprietorship, partnership, joint venture, corporation, or other enterprise in which the trust has an interest (whether or not such interest is total or controlling). My Trustee may receive compensation for services.

My Trustee may contract with and otherwise deal with any such enterprise in the same manner as it would with any enterprise in which the trust has no interest, and may use any voting power my Trustee may have to implement its authority (whether as Trustee or as an officer, director, or other official of the enterprise).

With respect to any units in a limited liability company, limited partnership, or stock in a closely-held corporation ("closely-held company") that are contributed to the trust, the powers granted to my Trustee in this Article shall not disqualify my Trustee from acting personally and independently, and not in a fiduciary capacity, with respect to any closely held company, from holding office in the closely-held company, from accepting remuneration from the closely-held company, from voting any units or stock in favor of the Trustee as a director or officer of the closely-held company, or from purchasing or selling units or stock of the closely-held company.

If the trust owns or acquires an interest in a business as a shareholder, partner, sole proprietor, member, participant in a joint venture or otherwise, my Trustee may exercise the authority and discretion provided for in this Section. The powers granted in this Section are in addition to and not in limitation of all other powers granted to my Trustee in this agreement.

(a) No Duty to Diversify

Notwithstanding any duty to diversify imposed by state law, my Trustee may retain any business in which the trust has an ownership interest even though the interest may constitute all or a substantial portion of the trust property. I recognize that the value of a non-controlling interest in a business entity may be less than the underlying value of the net assets of the entity. Nonetheless, I authorize my Trustee to retain non-controlling business interests owned by the trust.

(b) Specific Management Powers

My Trustee shall have all power and authority necessary to manage and operate any business owned by the trust, whether directly or indirectly, including, without limitation, the express powers set forth in this subsection.

My Trustee may participate directly in the conduct of the business, by serving as a general partner of a limited partnership, a member, manager or managing member of a limited liability company, or a shareholder of a corporation, or may employ others to serve in that capacity.

My Trustee may take part in the management of the business and delegate duties with respect to management, together with the requisite powers, to any employee, manager, partner or associate of the business, without incurring any liability for the delegation. To the extent that the business interest held by the trust is not one that includes management powers (such as a minority stock interest, limited partnership interest, or a membership interest in a limited liability company), my Trustee shall have no obligation to supervise the management of the underlying assets, and no liability for the actions of those who do manage the business.

My Trustee may enter into management agreements and nominee agreements whereby my Trustee and the trust may serve as the exclusive manager or nominee of property or property interests on behalf of any limited partnership, limited liability company or corporation.

My Trustee, individually or if my Trustee is a corporate fiduciary or an employee of the Trustee, may act as a director, general or limited partner, associate or officer of the business.

My Trustee may participate with any other person or entity in the formation or continuation of a partnership either as a general or limited partner, or in any joint venture. My Trustee shall have and exercise all the powers of management necessary and incidental to a membership in the partnership, limited partnership, or joint venture, including the making of charitable contributions.

My Trustee may reduce, expand, limit or otherwise adjust the operation or policy of the business. My Trustee may subject the principal and income of the trust to the risks of the business for such term or period as my Trustee may determine.

My Trustee may advance money or other property to any business in which the trust has an interest, make loans (subordinated or otherwise) of cash or securities to the business and guarantee the loans of others made to the business. My Trustee may borrow money for the business, either alone or with other persons interested in the business, and secure any such loan or loans by a pledge or mortgage of any part of any trust property.

My Trustee may select and vote for directors, partners, associates and officers of the business. My Trustee may enter into owners' agreements

with a business in which the trust has an interest or with the other owners of the business.

My Trustee may execute agreements and amendments to agreements that are necessary to the operation of the business including, but not limited to, stockholder agreements, partnership agreements, buy-sell agreements and operating agreements for limited liability companies.

My Trustee may generally exercise any and all powers necessary for the continuation, management, sale or dissolution of the business. My Trustee may participate in the sale, reorganization, merger, consolidation, recapitalization, or liquidation of the business. My Trustee may sell or liquidate the business or business interest on such price and on such terms as my Trustee deems advisable and in the best interests of the trust and the beneficiaries. My Trustee may sell any business interest held by the trust to one or more of the beneficiaries of this trust or to any trust in which a majority of the beneficiaries are one or more of the beneficiaries of this trust. The sale may be made in exchange for cash, a private annuity, an installment note or any combination thereof.

My Trustee may exercise all of the business powers granted in this agreement even though my Trustee may be personally invested in or otherwise involved with the business.

(c) Business Liabilities

If any tort or contract liability arises in connection with the business, and if the trust is a responsible party with regard to the liability, my Trustee shall satisfy the liability first from the assets of the business, and only then from other trust property.

(d) Trustee Compensation

In addition to the Trustee compensation set forth in Section 13.05, my Trustee may receive additional reasonable compensation for services in connection with the operation of the business. My Trustee may receive this compensation directly from the business, from the trust or partly from both.

(e) Conflicts of Interest

My Trustee may exercise all of the powers granted in this trust agreement even though my Trustee may be involved with or have a personal interest in the business.

Section 14.06 Contract Powers

My Trustee may sell at public or private sale, transfer, exchange for other property, and otherwise dispose of trust property for consideration and upon terms and conditions that my Trustee deems advisable. My Trustee may grant options of any duration for any such sales, exchanges, or transfers of trust property.

My Trustee may enter into contracts, and may deliver deeds or other instruments, that my Trustee deems appropriate.

Section 14.07 Common Investments

For purposes of convenience with regard to the administration and investment of the trust property, my Trustee may invest part or all of the trust property jointly with trust property of other trusts for which my Trustee is also serving as a Trustee. For this purpose, a corporate fiduciary acting as my Trustee may use common funds for investment.

When trust property is managed and invested in this manner, my Trustee shall maintain records that sufficiently identify that portion of the jointly invested assets that constitute the trust property of this trust.

Section 14.08 Environmental Powers

My Trustee shall have the right to inspect trust property to determine compliance with or to respond to any environmental law affecting the trust property. "Environmental law" shall mean any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or of human health.

My Trustee may refuse to accept property if my Trustee determines that the property is or may be contaminated by any hazardous substance or is or was used for any purpose involving hazardous substances that could create liability to the trust or to my Trustee.

My Trustee may use and expend trust property to (i) conduct environmental assessments, audits or site monitoring; (ii) take remedial action to contain, clean up or remove any hazardous substance including a spill, discharge or contamination; (iii) institute, contest or settle legal proceedings brought by a private litigant or any local, state, or federal agency concerned with environmental compliance; (iv) comply with any order issued by any court or by any local, state, or federal agency directing an assessment, abatement or clean-up of any hazardous substance; and (v) employ agents, consultants and legal counsel to assist my Trustee in these actions.

My Trustee shall not be liable for any loss or reduction in value sustained by my trust as a result of my Trustee's retention of property on which hazardous materials or substances requiring remedial action are discovered unless my Trustee contributed to the resulting loss or reduction in value through willful misconduct or gross negligence.

My Trustee shall not be liable to any beneficiary or to any other party for any decrease in the value of trust property as a result of my Trustee's compliance with any environmental law, including any reporting requirement.

My Trustee may release, relinquish or disclaim any power held by my Trustee that my Trustee determines may cause my Trustee to incur individual liability under any environmental law.

Section 14.09 Farming and Ranching Operations

If the trust owns or acquires an interest in a farm, ranch or other agricultural property or business, my Trustee may exercise the authority and discretion provided for in this

Section. The powers granted in this Section are in addition to and not in limitation of all other powers granted to my Trustee in this agreement.

(a) Authority to Operate the Farm or Ranch

Notwithstanding any duty to diversify imposed by state law, my Trustee may retain and continue to operate a farm or ranch even though the interest may constitute all or a substantial portion of the trust property.

My Trustee may take part in the management of the farm or ranch or hire a farm manager or a professional farm management service. My Trustee may delegate any of the powers authorized by this Section to a hired farm manager or professional farm management service.

My Trustee may purchase, sell, hold, manage, operate, lease, improve and maintain the farm or ranch, or any interests in the farm or ranch, and in general deal with and do all things necessary to operate the farm or ranch as my Trustee deems advisable.

My Trustee may buy, sell and raise livestock; plant, cultivate, harvest and sell cash crops; produce timber or forest products for sale; or lease or rent all or part of the farm or ranch for cash or a share of the crops. My Trustee may contract with hired labor, tenants or sharecroppers.

My Trustee may construct, repair and improve farm buildings, fences and other farm or ranch structures including drainage facilities, dig and maintain wells, ponds and lagoons, and participate in cooperative agreements concerning water rights and ditch rights.

My Trustee may purchase or rent any kind of farm machinery, equipment, feed and seed necessary for the operation of the farm or ranch.

My Trustee may use approved soil conservation practices in order to conserve, improve and maintain the productivity of the soil, and may engage in timber or forest conservation practices.

My Trustee may engage and participate in any farm program sponsored by any federal, state or local governmental agency.

(b) Business Liabilities

If any tort or contract liability arises in connection with the farm or ranch, and if the trust is a responsible party with regard to the liability, my Trustee shall satisfy the liability first from the assets of the farm or ranch, and only then from other trust property.

(c) Trustee Compensation

In addition to the Trustee compensation set forth in Section 13.05, my Trustee may receive additional reasonable compensation for services in connection with the operation of a farm or ranch. My Trustee may receive this compensation directly from the farm or ranch, from the trust or partly from both.

(d) Conflicts of Interest

My Trustee may exercise all of the powers granted in this trust agreement even though my Trustee may be involved with or have a personal interest in the farm or ranch.

Section 14.10 Insurance Powers

My Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on my life, the life of any beneficiary, or on the life of any person in whom any beneficiary has an insurable interest.

My Trustee may purchase disability, medical, liability, long-term health care and other insurance on behalf of and for the benefit of any beneficiary. My Trustee may purchase annuities and similar investments for any beneficiary.

My Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy. My Trustee may borrow money to pay premiums due on any policy, either by borrowing from the company issuing the policy or from another source. My Trustee may assign the policy as security for the loan.

My Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

My Trustee may elect any paid-up insurance or extended term insurance nonforfeiture option contained in a policy.

My Trustee shall have the power to sell any policy at its fair market value to anyone having an insurable interest in the policies including the insured.

My Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing the policy.

Upon termination of the trust, my Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

Section 14.11 Loans and Borrowing Powers

My Trustee may make secured or unsecured loans to any person (including a beneficiary), entity, trust or estate, for any term or payable on demand, with or without interest. My Trustee may enter into or modify the terms of any mortgage or security agreement granted in connection with any loan and may release or foreclose on the mortgage or security.

My Trustee may borrow money at interest rates and on other terms that it deems advisable from any person, institution or other source including, in the case of a corporate fiduciary, its own banking or commercial lending department.

My Trustee may encumber trust property by mortgages, pledges and other hypothecation and shall have the power to enter into any mortgage, whether as a mortgagee or

mortgagor even though the term may extend beyond the termination of the trust and beyond the period that is required for an interest created under this agreement to vest in order to be valid under the rule against perpetuities.

My Trustee may purchase, sell at public or private sale, trade, renew, modify, and extend mortgages. My Trustee may accept deeds in lieu of foreclosure.

Section 14.12 Nominee Powers

My Trustee may hold real estate, securities and any other trust property in the name of a nominee or in any other form without disclosing the existence of any trust or fiduciary capacity.

Section 14.13 Oil, Gas and Mineral Interests

My Trustee may acquire, maintain, develop and exploit, either alone or jointly with others, any oil, gas, coal, minerals or other natural resource rights or interests.

My Trustee may drill, test, explore, mine, develop, extract, remove, convert, manage, retain, store, sell and exchange any of such rights and interests on terms and for a price that my Trustee deems advisable.

My Trustee may execute leases, pooling and unitization agreements and other types of agreements in connection with such oil, gas, coal, mineral and other natural resource rights and interests even though such arrangements may extend beyond the termination of the trust.

My Trustee may execute division orders, transfer orders, releases, assignments, farm outs, and any other instruments that it deems proper.

My Trustee may employ the services of consultants and outside specialists in connection with the evaluation, management, acquisition, disposition, and development of any mineral interest, and may pay the cost of the services from the principal and income of the trust property.

Section 14.14 Payment of Taxes and Expenses

Except as otherwise provided in this agreement, my Trustee is authorized to pay all property taxes, assessments, fees, charges, and other expenses incurred in the administration or protection of the trust. All payments shall be a charge against the trust property and shall be paid by my Trustee out of the income, or to the extent that the income is insufficient, then out of the principal of the trust property. The determination of my Trustee with respect to the payment of expenses shall be conclusive upon the beneficiaries.

Section 14.15 Qualified Family Owned Business Interests Deduction

My Trustee, other than an Interested Trustee, shall have the power to amend the terms of a trust holding "qualified family-owned business interests" as defined in Section 2057 of the Internal Revenue Code, in order to permit trust property to qualify for the "family owned business deduction," even if the amendment changes beneficial interests and that directs the segregation of trust property into more than one trust.

Section 14.16 Qualified Real Property Valuation

My Trustee, other than an Interested Trustee, shall have the power to amend the terms of a trust holding "qualified real property" as defined in Section 2032A of the Internal Revenue Code, in order to permit the qualified real property to qualify or continue to qualify for special use valuation permitted under Section 2032A, even if the amendment changes beneficial interests and that directs the segregation of trust property into more than one trust.

Section 14.17 Real Estate Powers

My Trustee may sell at public or private sale, convey, purchase, exchange, lease for any period, mortgage, manage, alter, improve and in general deal in and with real property in such manner and on such terms and conditions as my Trustee deems appropriate.

My Trustee may grant or release easements in or over, subdivide, partition, develop, raze improvements, and abandon, any real property.

My Trustee may manage real estate in any manner that my Trustee deems best and shall have all other real estate powers necessary for this purpose.

My Trustee may enter into contracts to sell real estate. My Trustee may enter into leases and grant options to lease trust property even though the term of the agreement extends beyond the termination of the trust and beyond the period that is required for an interest created under this agreement to vest in order to be valid under the rule against perpetuities. For such purposes, my Trustee may enter into any contracts, covenants and warranty agreements that my Trustee deems appropriate.

Section 14.18 Residences and Tangible Personal Property

My Trustee may acquire, maintain and invest in any residence for the use and benefit of the beneficiaries, whether or not the residence is income producing and without regard to the proportion that the value of the residence may bear to the total value of the trust property and even if retaining the residence involves financial risks that trustees would not ordinarily incur. My Trustee may pay or make arrangements for others to pay all carrying costs of the residence, including, but not limited to, taxes, assessments, insurance, expenses of maintaining the residence in suitable repair, and other expenses relating to the operation of the residence for the benefit of the beneficiaries.

My Trustee may acquire, maintain and invest in articles of tangible personal property, whether or not the property is income producing, and may pay the expenses of the repair and maintenance of the property.

My Trustee shall have no duty to convert the property referred to in this Section to productive property except as required by other provisions of this agreement.

My Trustee may permit any income beneficiary of the trust to occupy any real property or use any personal property owned by the trust on terms or arrangements that my Trustee may determine, including rent free or in consideration for the payment of taxes, insurance, maintenance, repairs, or other charges.

My Trustee shall have no liability for any depreciation or loss as a result of the retention of any property retained or acquired under the authority of this Section.

Section 14.19 Retention and Abandonment of Trust Property

My Trustee may retain, without liability for depreciation or loss resulting from retention, any property constituting the trust at the time of its creation, at the time of my death or as the result of the exercise of a stock option. My Trustee may retain property, notwithstanding the fact that the property may not be of the character prescribed by law for the investment of assets held by a fiduciary, and notwithstanding the fact that retention may result in inadequate diversification under any applicable Prudent Investor Act or other applicable law.

My Trustee may hold property that is non-income producing or is otherwise nonproductive if holding the property is, in the sole and absolute discretion of my Trustee, in the best interests of the beneficiaries. On the other hand, except when I am serving as a Trustee, my Trustee shall invest contributions of cash and cash equivalents as soon as reasonably practical after the assets have been acquired by the trust. My Trustee is permitted to retain a reasonable amount in cash or money market accounts in order to pay anticipated expenses and other costs and to provide for anticipated distributions to or for the benefit of a beneficiary.

My Trustee may abandon any trust property that my Trustee deems to be of insignificant value.

Section 14.20 Securities, Brokerage and Margin Powers

My Trustee may buy, sell, trade and otherwise deal in stocks, bonds, investment companies, mutual funds, common trust funds, commodities, options and other securities of any kind and in any amount, including short sales. My Trustee may write and purchase call or put options, and other derivative securities. My Trustee may maintain margin accounts with brokerage firms and may pledge securities to secure loans and advances made to my Trustee or to or for the benefit of a beneficiary.

My Trustee may place all or any part of the securities held by the trust in the custody of a bank or trust company. My Trustee may have all securities registered in the name of the bank or trust company or in the name of its nominee. My Trustee may appoint the bank or trust company as the agent or attorney in fact to collect, receive, receipt for and disburse any income and generally to perform the duties and services incident to a custodian of accounts.

My Trustee may employ a broker-dealer as a custodian for securities held by the trust and may register the securities in the name of the broker-dealer or in the name of a nominee with or without the addition of words indicating that the securities are held in a fiduciary capacity. My Trustee may hold securities in bearer or uncertificated form and may use a central depository, clearing agency or book-entry system, such as The Depository Trust Company, Euroclear or the Federal Reserve Bank of New York.

My Trustee may participate in any reorganization, recapitalization, merger or similar transaction. My Trustee may exercise or sell conversion or subscription rights for securities of all kinds and description.

My Trustee may give proxies or powers of attorney that may be discretionary and with or without powers of substitution. My Trustee may vote or refrain from voting as to any matter.

Section 14.21 Settlement Powers

My Trustee may settle, by compromise, adjustment, arbitration or otherwise any and all claims and demands in favor of or against the trust. My Trustee may release or abandon any claim in favor of the trust.

Section 14.22 Sub-Chapter S Corporation Stock Provisions

After my death and during any period when the trust is not treated for tax purposes as a grantor trust under Section 671 of the Internal Revenue Code, my Trustee may elect to hold any S corporation stock held by the trust as a separate "electing small business trust" as defined in Section 1361(e)(1) or as a separate "qualified subchapter S trust," as defined in Section 1361(d)(3).

In making this determination, my Trustee may consider any changes to the terms and conditions of the trust that will be required as a result of either election.

For purposes of this Section, "S corporation stock" shall mean all capital stock issued by a corporation (or other entity taxable as a corporation for federal income tax purposes) that is treated, or intends to be treated under Section 1361(a), as an "S corporation" for federal income tax purposes.

(a) Electing Treatment as an Electing Small Business Trust

If my Trustee elects under Section 1361(e)(3) of the Internal Revenue Code to qualify the trust or portion thereof as an "electing small business trust," my Trustee shall:

Apportion to the electing small business trust a reasonable share of the unallocated expenses of all trusts created under this agreement, in accordance with the applicable provisions of the Internal Revenue Code and Treasury Regulations; and

Administer the trust as an electing small business trust, under Section 1361(e) of the Internal Revenue Code.

(b) Electing Treatment as a Qualified Subchapter S Trust

If my Trustee elects to treat the trust or portion thereof as a "qualified subchapter S trust," my Trustee shall:

Refer to the qualified subchapter S trust using the same name as the trust to which the stock was originally allocated, plus the name of the current income beneficiary of the trust, followed by the letters "QEST;"

Administer the qualified subchapter S trust in accordance with the same provisions contained in the trust to which the S corporation stock was originally allocated; provided,

however, that the provisions of this subsection shall control the administration of the trust to the extent that they are inconsistent with the provisions of the original trust;

Maintain the qualified subchapter S trust as a separate trust held for the benefit of one beneficiary as required in Section 1361(d)(3); and

Request that the current income beneficiary of the trust, with the assistance of my Trustee, make an election in accordance with Section 1361(d)(2) to qualify the trust as a qualified subchapter S trust within the meaning of Section 1361(d)(3).

(1) Current Income Beneficiary

The "current income beneficiary" of a qualified subchapter S trust is the person who has a present right to receive income distributions from the trust to which the S corporation stock is allocated. A qualified subchapter S trust shall have only one current income beneficiary.

If under the terms of the agreement, there is more than one person who has a present right to receive income distributions from the trust originally holding the S corporation stock, my Trustee shall cause the S corporation stock to be segregated into separate qualified subchapter S trusts for each person who has a present right to receive income distributions.

(2) Distributions

Until the first to occur of (a) the death of the current income beneficiary and (b) the date on which the qualified subchapter S trust no longer holds any S corporation stock (the "QSST termination date"), my Trustee shall distribute to the current income beneficiary, at least annually, all of the trust's "net income," as that term is defined in Section 643(b) of the Internal Revenue Code.

The terms of the trust to which the S corporation stock was originally allocated shall govern distributions of principal from the qualified subchapter S trust; provided, however, that until the QSST termination date, my Trustee may only distribute principal to the current income beneficiary of the qualified subchapter S trust.

(3) Allocation of Income and Expenses

My Trustee shall characterize receipts and expenses of any qualified subchapter S trust in a manner consistent with Section 643(b) of the Internal Revenue Code.

(4) Trust Merger or Consolidation

My Trustee may not merge or consolidate any qualified subchapter S trust with the assets of another trust if doing so would jeopardize the qualification of either trust as a qualified subchapter S trust.

(c) Governance of the Trusts

The following additional provisions shall apply to any separate trust created under this Section.

(1) Protection of S Corporation Status

My Trustee shall not administer a trust holding S corporation stock in a manner that would cause the termination of the S corporation status of the entity whose stock is held as part of the trust. Therefore during any period that the trust holds S corporation stock, the terms of this agreement shall be construed in a manner that is consistent with the trust qualifying as an electing small business trust or as a qualified subchapter S trust. Any provision of this agreement that cannot be so construed or applied shall be disregarded.

(2) Methods of Distribution

No method of distribution permitted under this Section may be used in a manner that would jeopardize the qualification of the trust as an electing small business trust or as a qualified subchapter S trust.

(3) Election

Any reference in this agreement to any person acting in an individual or fiduciary capacity, making an election for himself or for or on behalf of any other person, shall include, but not be limited to, an election made in accordance with Section 1361(e)(3), Section 1361(d)(2) or any other applicable subsection of Section 1361 of the Internal Revenue Code.

(4) Disposition of S Corporation Stock

If the continuation of any trust would, in my Trustee's opinion, result in the termination of the S corporation status of any entity whose stock is held as a part of the trust property, my Trustee, other than an Interested Trustee, shall have, in addition to the power to sell or otherwise dispose of the stock, the power to distribute the stock to the person who is then entitled to receive the income from the trust.

Section 14.23 Limitation on My Trustee's Powers

All powers granted to my Trustee under this agreement or by applicable law shall be limited as set forth in this Section, unless explicitly excepted by reference to this Section. The limitations set forth in this Section shall not apply to me.

(a) An Interested Trustee Limited to Ascertainable Standards

An Interested Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal, or the termination of the trust to or for the benefit of a beneficiary, to the extent that the exercise of such discretion is other than for the health, education, maintenance or support of a beneficiary as described under Sections 2041 and 2514 of the Internal Revenue Code.

(b) No Distributions in Discharge of Certain Legal Obligations

My Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of my Trustee, including the obligation of support.

If a beneficiary or any other person has the power to remove a Trustee, that Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of the person having the power to remove the Trustee, including that person's obligation of support.

(c) Insurance Policy on the Life of My Trustee

If the trust holds a policy that insures the life of my Trustee, my Trustee shall have no right to exercise any powers or rights with respect to the policy. A Cotrustee serving under this agreement shall exercise the powers and rights with respect to the policy.

If the insured Trustee is the only Trustee, then an Independent Special Trustee designated under Section 3.08 shall exercise the powers and rights with respect to the policy.

If any rule of law or court decision construes the ability of the insured Trustee to name an Independent Special Trustee as an incident of ownership of the policy, then a majority of the then current mandatory and discretionary income beneficiaries (excluding the insured Trustee if he or she is a beneficiary) shall select the Independent Special Trustee.

(d) Insurance Policy on a Beneficiary's Life

If the trust holds a policy that insures the life of a beneficiary, the beneficiary (acting individually or as Trustee) shall have no power over the policy, the cash value of the policy, or the proceeds of the policy. The intent of this denial of power is to prevent an insured beneficiary from

having a power that would constitute an incident of ownership of the policy.

In addition, no distribution of income or principal to the insured beneficiary shall be satisfied out of the proceeds of the policy, the cash value of the policy or any other economic benefit of the policy.

The limitations of this subsection shall not apply if the proceeds of the policy would, upon the death of the beneficiary, otherwise be included in the gross estate of the beneficiary for federal estate tax purposes.

Article Fifteen

General Provisions

Section 15.01 Maximum Term for Trusts

Notwithstanding any other provision of this agreement, unless terminated earlier under other provisions of this agreement, each trust created under this agreement shall terminate upon the expiration of the longest period that property may be held in trust under this agreement without violating the applicable rule against perpetuities.

If the applicable rule against perpetuities for trusts is determined by reference to the death of the last to die among a group of individuals living on the date of my death, the group of individuals shall consist of the descendants of my paternal and maternal grandparents and the descendants of John Davison Rockefeller, born in Richford, New York, in 1839, who are living at the date of my death.

At that time, the remaining trust property shall vest in and be distributed to the persons entitled to receive mandatory distributions of net income of the trust and in the same proportions. If none of the beneficiaries is entitled to mandatory distributions of net income, the remaining trust property shall vest in and be distributed to the beneficiaries entitled to receive discretionary distributions of net income of the trust, in equal shares *per stirpes*.

Section 15.02 Spendthrift Provision

This trust and all trusts created under this trust agreement shall be a spendthrift trust as defined in the Spendthrift Trust Act of Nevada, except for my interest therein while I am living. No beneficiary or remainderman of any trust established under this trust shall have the right or power to sell, transfer, assign, pledge, mortgage, alienate, hypothecate their interest in the principal or income of the trust estate in any manner whatsoever. To the fullest extent of the law, the interest of each beneficiary and remainderman shall not be subject to the claim of any creditors or liable to attachment, execution, bankruptcy proceedings, or any other legal process. The Trustee shall pay, disburse, and distribute principal and income of the trust estate only in the manner provided for in this trust agreement and not upon any attempted transfer or assignment, whether oral or written, of any beneficiary or remainderman nor by operation of law.

Section 15.03 Contest Provision

If any beneficiary of this trust or any trust created under this trust agreement, alone or in conjunction with any other person engages in any of the following actions, the right of the beneficiary to take any interest given to the beneficiary under this trust or any trust created under this trust agreement must be determined as it would have been determined had the beneficiary predeceased me without surviving descendants.

Contests by a claim of undue influence, fraud, menace, duress or lack of testamentary capacity, or otherwise objects in any court to the validity of (a) this trust, (b) any trust created under the terms of this agreement, (c) my will, or (d) any beneficiary designation of an annuity, retirement plan,

IRA, Keogh, pension or profit sharing plan or insurance policy signed by me, (collectively referred to hereafter in this Section as "Document" or "Documents") or any amendments or codicils to any Document; or

Seeks to obtain an adjudication in any court proceeding that a Document or any of its provisions is void, or otherwise seeks to void, nullify or set aside a Document or any of its provisions; or

Files suit on a creditor's claim filed in a probate of my estate, against my trust estate, or any other Document, after rejection or lack of action by the respective fiduciary; or

Files a petition or other pleading to change the character (community, separate, joint tenancy, partnership, domestic partnership, real or personal, tangible or intangible) of property already so characterized by a Document; or

Claims ownership in a court proceeding to any asset I hold in joint tenancy, other than as a surviving joint tenant; or

Files a petition to determine domestic partnership property as my cohabitant; or

Files a petition for probate homestead in a probate proceeding of my estate without the prior written consent of the Personal Representative designated in my Will; or

Files a petition for family allowance in a probate of my estate without the prior written consent of the Personal Representative designated in my will; or

Files a petition to impose a constructive trust or resulting trust on any assets of the trust estate; or

Participates in any of the above actions in a manner adverse to the trust estate, such as conspiring with or assisting any person who takes any of the above actions;

then the right of such beneficiary to take any interest given to such beneficiary under this trust or any trust created under this trust agreement shall be determined as it would have been determined had such beneficiary predeceased me without surviving issue.

My Trustee is hereby authorized to defend, at the expense of the trust estate, any violation of this Section. A "contest" shall include any action described above in an arbitration proceeding and shall not include any action described above solely in a mediation not preceded by a filing of a contest with a court, notwithstanding the foregoing. In addition, should any beneficiary under the trust contest a provision of the same, the Trustee shall charge such beneficiary's interest with all attorneys fees and costs incurred by the Trustee in connection with same.

This Section may not be applied so as to cause a forfeiture of any distribution otherwise qualifying for the federal estate tax charitable deduction.

Section 15.04 Survivorship Presumption

If any beneficiary is living at my death, but dies within 90 days after my death, then the beneficiary will be deemed to have predeceased me for purposes of this agreement.

Section 15.05 Definitions

For purposes of this agreement, the following terms have the following meanings:

(a) Adopted and Afterborn Persons

A legally adopted person in any generation and his or her descendants, including adopted descendants, has the same rights and shall be treated in the same manner under this agreement as natural children of the adopting parent, provided such person is legally adopted prior to attaining the age of 18 years. A person is deemed to be legally adopted if the adoption was legal in the jurisdiction in which it occurred at the time that it occurred.

A fetus in utero that is later born alive shall be considered a person in being during the period of gestation.

(b) Agreement

The term "this agreement" means this trust agreement and includes all trusts created under the terms of this agreement.

(c) Available GST Exemption

"My available GST Exemption" means the GST Exemption provided in Section 2631 of the Internal Revenue Code in effect at the time of my death; reduced by the aggregate of (1) the amount, if any, of GST Exemption allocated to my lifetime transfers, including those allocations made at the time of my death by my Personal Representative, by my Trustee, or by operation of law and (2) the amount, if any, allocated to direct skips as defined in Section 2612(c)(1) of the Internal Revenue Code that do not qualify for an exclusion from the generation-skipping transfer tax occurring at my death to or for the benefit of my descendants.

If, at the time of my death, I have made a lifetime transfer to a trust with an inclusion ratio of greater than zero but have not filed a gift tax return and the due date for the gift tax return has not yet passed, my available GST Exemption shall also be reduced to the extent necessary and possible to reduce the trust inclusion ratio to zero, thereby exempting the transfer from generation-skipping transfer tax.

(d) Descendants

The term "descendants" shall include a person's lineal descendants of all generations.

(e) Education

The term "education" is intended to be an ascertainable standard in accordance with Section 2041 and Section 2514 of the Internal Revenue Code and shall include, but not be limited to:

Enrollment at private elementary, junior and senior high school including boarding school;

Undergraduate and graduate study in any field at a college or university;

Specialized, vocational or professional training or instruction at any institution, including private instruction; and

Any other curriculum or activity that my Trustee may deem useful for developing the abilities and interests of a beneficiary including, without limitation, athletic training, musical instruction, theatrical training, the arts and travel.

The term "education" shall also include distributions made by my Trustee for expenses such as tuition, room and board, fees, books and supplies, tutoring and transportation and a reasonable allowance for living expenses.

(f) Incapacity

Except as otherwise provided in this agreement, a person is deemed incapacitated in any one of the following circumstances.

(1) The Opinion of Two Licensed Physicians

An individual shall be deemed incapacitated whenever, in the written opinion of two licensed physicians, the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age, illness, use of prescription medications, drugs or other substances, or any other cause.

An individual shall be deemed restored to capacity whenever the individual's personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

(2) Court Determination

An individual is deemed incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent or legally incapacitated.

(3) Detention, Disappearance or Absence

An individual is deemed incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance or absence or detention under duress may be established by an affidavit of my

Trustee, or, if no Trustee is serving, by the affidavit of any beneficiary. The affidavit shall describe the circumstances of the individual's disappearance, absence or detention and may be relied upon by any third party dealing in good faith with my Trustee in reliance upon the affidavit.

(g) Income Beneficiary

The term "income beneficiary" means any beneficiary who is then entitled to receive distributions of the net income of the trust, whether mandatory or discretionary.

Unless otherwise provided in this agreement, the phrase "majority of the income beneficiaries" means any combination of income beneficiaries who, if all accrued net income were distributed on the day of a vote by the beneficiaries, would receive more than 50% of the accrued net income. For purposes of this calculation, beneficiaries who are eligible to receive discretionary distributions of net income are deemed to receive the income in equal shares.

References to a "majority" refer to a majority of the entire trust collectively until my Trustee allocates property to separate trusts or trust shares. After the allocation of property to separate trusts or trust shares, references to a "majority" refer to a majority of each separate trust or trust share.

(h) Income in Respect of a Decedent (IRD)

The term "income in respect of a decedent" or "IRD" means income received after a decedent's death that would have been taxable to the decedent if the income had been received by the decedent during the decedent's lifetime. For example, payments under qualified retirement plans and other deferred compensation arrangements are IRD. For purposes of this agreement, IRD means any income that would be classified as IRD under Section 691(a) of the Internal Revenue Code.

(i) Independent Trustee

The term "Independent Trustee" means a Trustee who is not an Interested Trustee as defined in subsection (j) and includes an Independent Special Trustee appointed under the provisions of Section 3.08. Whenever (1) a power is granted exclusively to an Independent Trustee or (2) the phrase "other than an Interested Trustee" is used, then the power or discretion may be exercised only by an Independent Trustee. Whenever this agreement specifically prohibits an Interested Trustee from exercising discretion or performing an act, then only an Independent Trustee may exercise that discretion or perform that act.

(j) Interested Trustee

The term "Interested Trustee" means (1) a Trustee who is a transferor of property to the trust; (2) a Trustee who is a beneficiary of the trust; (3) a

Trustee who is related or subordinate within the meaning of Section 672(c) of the Internal Revenue Code to a transferor of property to the trust or a beneficiary of the trust; or (4) a Trustee whom a transferor of property to the trust or a beneficiary of the trust can remove and replace by appointing a Trustee that is related or subordinate to the beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

For purposes of this subsection "a transferor of property to the trust" includes a person whose qualified disclaimer resulted in property passing to the trust.

For purposes of this subsection "a beneficiary of the trust" means a person who is or in the future may be eligible to receive income or principal from the trust pursuant to the terms of the trust. A person shall be considered a beneficiary of a trust even if he or she has only a remote contingent remainder interest in the trust; however, a person shall not be considered a beneficiary of a trust if the person's only interest is as a potential appointee under a testamentary power of appointment.

(k) Internal Revenue Code and Treasury Regulations

References to the "Internal Revenue Code" or to its provisions are to the Internal Revenue Code of 1986, as amended from time to time, and the corresponding Treasury Regulations, if any. References to the "Treasury Regulations," are to the Treasury Regulations under the Internal Revenue Code in effect from time to time. If a particular provision of the Internal Revenue Code is renumbered, or the Internal Revenue Code is superseded by a subsequent federal tax law, any reference is deemed to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in this agreement. The same rule shall apply to references to the Treasury Regulations.

(l) Legal Representative or Personal Representative

As used in this agreement, the term "legal representative" or "Personal Representative" means a person's guardian, conservator, executor, administrator, Trustee, or any other person or entity personally representing a person or the person's estate.

(m) Per Stirpes

Whenever a distribution is to be made to a person's descendants "per stirpes," the distribution shall be divided into as many shares as there are then living children of the person and deceased children of the person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among the child's then living descendants in the same manner.

(n) Primary Beneficiary

The primary beneficiary of a trust created under this agreement is the oldest income beneficiary of that trust unless some other individual is specifically designated as the primary beneficiary of that separate trust.

(o) Qualified Retirement Plan

The term "qualified retirement plan" means a plan qualified under Section 401 of the Internal Revenue Code, an individual retirement arrangement under Section 408 or Section 408A or a tax-sheltered annuity under Section 403. The term "qualified retirement benefits" means the amounts held in or distributed pursuant to a plan qualified under Section 401, an individual retirement arrangement under Section 408 or Section 408A, a tax-sheltered annuity under Section 403 or any other benefit subject to the distribution rules of Section 401(a)(9).

(p) Shall and May

Unless otherwise specifically provided in this agreement or by the context in which used, I use the word "shall" in this agreement to command, direct or require, and the word "may" to allow or permit, but not require. In the context of my Trustee, when I use the word "may" I intend that my Trustee may act in its sole and absolute discretion unless otherwise stated in this agreement.

(q) Trust

The terms "this trust" or "this trust agreement" shall refer to this agreement and all trusts created under the terms of this agreement.

(r) Trustee

The term "my Trustee" or "Trustee" refers to the Trustee named in Article One and to any successor, substitute, replacement or additional person, corporation or other entity that is from time to time acting as the Trustee of any trust created under the terms of this agreement. The term "Trustee" refers to singular or plural as the context may require.

(s) Trustmaker

The term "Trustmaker" has the same legal meaning as "Grantor," "Settlor," "Trustor" or any other term referring to the maker of a trust.

(t) Trust Property

The phrase "trust property" shall be construed to mean all property held by my Trustee under this agreement, including all property that my Trustee may acquire from any source.

Section 15.06 General Provisions and Rules of Construction

The following general provisions and rules of construction shall apply to this agreement:

(a) Duplicate Originals

This agreement may be executed in any number of counterparts, each of which is deemed to be an original. Any person may rely upon a copy of this agreement certified under oath by my Trustee to be a true copy, to the same effect as if it were an original.

(b) Singular and Plural; Gender

Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word "or" when used in a list of more than two items may function as both a conjunction and a disjunction as the context requires or permits.

(c) Headings of Articles, Sections, and Subsections

The headings of Articles, Sections, and subsections used within this agreement are included solely for the convenience and reference of the reader. They have no significance in the interpretation or construction of this agreement.

(d) Governing State Law

This agreement is governed, construed and administered according to the laws of the State of Nevada as from time to time amended.

(e) Notices

Unless otherwise stated, whenever this agreement calls for notice, the notice must be in writing and must be personally delivered with proof of delivery, or mailed postage prepaid by certified mail, return receipt requested, to the last known address of the party requiring notice. Notice is effective on the date personally delivered or on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice is effective on the date it would normally have been received via certified mail. If notice is required to be given to a minor or incapacitated individual, notice must be given to the parent or legal representative of the minor or incapacitated individual.

(f) Severability

The invalidity or unenforceability of any provision of this agreement shall not affect the validity or enforceability of any other provision of this agreement. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this agreement are to be interpreted and construed as if the invalid provision had never been included in this agreement.

I have executed this restated trust agreement on this day, January 7, 2008. I certify to the officer taking my acknowledgment that I have read this restated trust agreement, that I understand it, and that it correctly states the provisions under which my trust property is to be administered and distributed by my Trustee.

Marjorie T. Connell
MARJORIE T. CONNELL, Trustmaker and
Trustee

STATE OF NEVADA

)

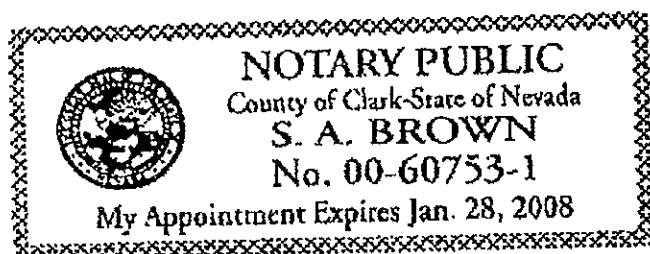
) ss.

COUNTY OF CLARK

)

This instrument was acknowledged before me on January 7, 2008, by MARJORIE T. CONNELL, as Trustmaker and as Trustee.

[Seal]



Sharon A. Brown

Sharon A. Brown, Notary Public

900 Rancho Lane

Las Vegas, Nevada 89106

My commission expires: January 28, 2008

Schedule A

Ten Dollars cash

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EXHIBIT D

Order Denying Motion To Refer Contested Probate Matter To Master-Probate
Commissioner Per EDCR 4.16; Directing Payment Of All Oil, Gas, Mineral And
Interest Royalties And Rent To Eleanor C. Hartman, Also Known As Eleanor C.
Ahern, As Trustee Of Trust No. 2 Of The W.N. Connell And Marjorie T. Connell
Living Trust Dated May 18, 1972; And Setting Calendar Call And Hearing

ORDR

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Attorneys for Trustee ELEANOR CONNELL HARTMAN AHERN

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of
THE W. N. CONNELL AND MARJORIE T. CONNELL
LIVING TRUST,
Dated May 18, 1972

Case No. P-09-066425-T

Dept. No. XXVI (26)

Date of Hearing: November 12, 2013

Time of Hearing: 9:30 a.m.

An Inter Vivos Irrevocable Trust.

**ORDER DENYING MOTION TO REFER CONTESTED PROBATE MATTER TO
MASTER-PROBATE COMMISSIONER PER EDCR 4.16; DIRECTING PAYMENT OF
ALL OIL, GAS, MINERAL AND INTEREST ROYALTIES AND RENT TO ELEANOR C.
HARTMAN, ALSO KNOWN AS ELEANOR C. AHERN, AS TRUSTEE OF TRUST NO. 2
OF THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST DATED MAY
18, 1972; AND SETTING CALENDAR CALL AND HEARING**

THIS MATTER having come on for hearing on the Petition For Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS 153.031(1)(E) and NRS 164.033(1)(A) (the "Petition") filed by Petitioner JACQUELINE M. MONTOYA, who appears by and through her counsel of record, JOSEPH J. POWELL, Esquire, of THE RUSHFORTH FIRM, LTD., and ELEANOR C. AHERN, a/k/a ELEANOR C. HARTMAN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, appearing by and through her counsel of record, JOHN R. MUGAN, Esquire, and MICHAEL D. LUM, Esquire, of the law firm of JEFFREY BURR, LTD., in opposition to the Petition and the Court having reviewed the pleadings, including the Motion To Refer Contested Probate Matter To Master-Probate

1 Commissioner Per EDCR 4.16 filed herein by ELEANOR C. AHERN, a/k/a ELEANOR C.
2 HARTMAN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING
3 TRUST dated May 18, 1972, examined the evidence and heard the arguments of counsel, the Court
4 makes the following Findings Of Fact, Conclusions Of Law, and Order:

5 **FINDINGS OF FACT**

6 1. The Motion To Refer Contested Probate Matter To Master-Probate Commissioner
7 Per EDCR 4.16 should be denied per the discretion of the Court.

8 2. An evidentiary hearing will be necessary regarding the Petition and the parties shall be
9 entitled to conduct discovery herein. Accordingly, this matter should be set on a four week stack to
10 begin February 18, 2014 at 9:00 a.m., and a Calendar Call will be held on January 24, 2014 at 11:00
11 a.m. at which Trial Counsel (and any party in proper person) must appear.

12 3. Texas legal counsel for Petitioner JACQUELINE M. MONTOYA has notified in
13 writing the various lessees-payors of the Upton County, Texas, oil, gas, mineral and interest royalties
14 and surface rent to lessor-payee ELEANOR C. HARTMAN, also known as ELEANOR C.
15 AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST
16 dated May 18, 1972, including but not limited to Apache Corporation-oil and gas leases with owner
17 number 47052 and owner number 45572, Plains Marketing, L.P.-oil and gas leases with owner
18 number 0782216 and owner number 0488845, and Drag A Cattle Company, LLC-surface tenant, of
19 the Petition of JACQUELINE M. MONTOYA filed herein and requested that all such payments be
20 held in suspense until the resolution of this action. The following was stated and agreed to by legal
21 counsel of both parties herein in open Court and as set forth in the Petition:
22

23 A. There is currently no reasonable doubt and currently no legitimate title dispute as to the
24 continued right that ELEANOR C. AHERN, individually as beneficiary of Trust No. 2 of
25 THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May
26 18, 1972, is entitled to a minimum of thirty-five percent (35%) of such oil, gas, mineral
27 and interest royalties and surface rent from the Upton County, Texas;
28

1 B. Petitioner JAQUELINE M. MONTOYA currently makes no claim to such thirty-five
2 percent (35%) share that has always been distributed to ELEANOR C. HARTMAN, also
3 known as ELEANOR C. AHERN;

4 C. The only current dispute between the parties is how the remaining sixty-five percent
5 (65%) share should be allocated;

6 D. Legal title of record to such Upton County, Texas, real estate and oil, gas, mineral and
7 interest rights is vested in ELEANOR C. HARTMAN, also known as ELEANOR C.
8 AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL
9 LIVING TRUST dated May 18, 1972, and

10 E. The last, peaceable, non-contested status quo between the parties was when all such oil,
11 gas, mineral and interest royalties and surface rent was paid to ELEANOR C.
12 HARTMAN, also known as ELEANOR C. AHERN, as Trustee.

13 None of the oil, gas, mineral and interest royalties and surface rent should be suspended but
14 should continue to be paid in a timely fashion to ELEANOR C. HARTMAN, also known as
15 ELEANOR C. AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL
16 LIVING TRUST dated May 18, 1972, during the pendency of this action, and ELEANOR C.
17 AHERN as beneficiary shall be entitled to thirty-five percent (35%) of such oil, gas, mineral and
18 interest royalties and surface rent and the remaining sixty-five percent (65%) of such oil, gas,
19 mineral and interest royalties and surface rent shall be held in the Trust by ELEANOR C.
20 HARTMAN, also known as ELEANOR C. AHERN, as Trustee until final resolution of this matter.

21 CONCLUSIONS OF LAW

22 Rule 4.16 of the Rules of Practice For The Eighth Judicial District Court Of The State Of
23 Nevada provides in part:
24

25 **“Rule 4.16. Contested matters and referrals to probate commissioner.**

26 (a) The probate judge may hear whichever contested matters the judge shall select, and
27 schedule them at the convenience of the judge’s calendar. The judge alone may also refer
28 contested matters pertaining to the probate calendar to a master appointed by the judge for
hearing and report.”

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that an evidentiary hearing of this matter is set on the four week stack to begin February 18, 2014 at 9:00 a.m., and a Calendar Call will be held on January 24, 2014 at 11:00 a.m. at which Trial Counsel (and any party in proper person) must appear.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ELEANOR C. AHERN
as beneficiary shall be entitled to thirty-five percent (35%) of such oil, gas, mineral and interest
royalties and surface rent and the remaining sixty-five percent (65%) of such oil, gas, mineral and
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///

1 interest royalties and surface rent shall be held in the Trust by ELEANOR C. HARTMAN, also
2 known as ELEANOR C. AHERN, as Trustee, until final resolution of this matter.

3 DATED: _____, 2013.

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6 _____
DISTRICT JUDGE

7 Submitted by:

8 JEFFREY BURR, LTD.

9 
10 JOHN R. MUGAN, Esquire

Nevada Bar No. 10690

11 2600 Paseo Verde Parkway, Suite 200

Henderson, NV 89074

12 Attorneys for Trustee ELEANOR CONNELL HARTMAN AHERN

13 APPROVED:

14 
15 JOSEPH POWELL, Esquire

Nevada Bar No. 8875

16 The Rushforth Firm

P.O. Box 371655

17 Las Vegas, NV 89137-1655

18 Attorneys for Petitioner JACQUELINE M. MONTOYA

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EXHIBIT E
Apache Oil and Gas Leases

OIL AND GAS LEASE

STATE OF TEXAS

§

COUNTY OF UPTON

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§

THIS AGREEMENT, made and entered into as of the 4th day of April, 2012, by and between the undersigned party or parties designated as Lessor on the signature page of this Lease (such party or parties hereinafter called "Lessor") and the undersigned party or parties designated as Lessee on the signature page of this Lease (such party or parties hereinafter called "Lessee").

1. **Definitions.** As used in this Lease, the following words and phrases shall have the meaning set forth below:

A. "commence a well", "commencement of a well", "commence actual drilling operations", "commencement of actual drilling operations", "actual drilling" or "actual drilling of a well" shall be deemed to occur at such time as there has been erected on the leased premises at the location for the well, a derrick, a rig and machinery capable of drilling to the base of the objective formation, the well has been "spudded-in" and the machinery for drilling is rotating under power.

B. "completion" or "completion of a well" shall be deemed to occur on (i) the date which is ninety (90) days after the production casing and/or liner has been run in the hole, (ii) the date which is ninety (90) days after total depth of the well in question has been reached, or (iii) the date indicated in the completion report for the well which is filed with the Railroad Commission, whichever is the earliest date.

C. The date of abandonment of a dry hole is the date indicated on the Texas Railroad Commission plugging report for the well or thirty (30) days after total depth is reached, whichever is the earlier date.

D. "production", "producing", "production in paying quantities", "commercial production", "production in commercial quantities", "producing in paying quantities" and "producing in commercial quantities" shall have the same meaning for purposes of this Lease, namely production in quantities sufficient to yield a return to the holders of the working interest excluding severance taxes, in excess of operating expenses, royalties and expenses of equipment beyond the wellhead and costs including depreciation of assets ("depreciation of assets" shall be the actual loss of fair market value of salvable equipment on the leased premises during the relevant period), even though drilling costs may never be recouped by working interest owners. The review period for purposes of determining whether production is in paying or commercial quantities shall be one hundred twenty (120) consecutive days. There shall be no review period when production ceases. Production in less than paying or commercial quantities shall never be considered as production for purposes of this Lease.

E. "operations for reworking", "reworking operations", "commencement of reworking operations", "commence reworking operations", "commence reworking operations" and "actual reworking operations" shall have the same meaning being the actual re-entry into an existing wellbore with a drilling or workover rig capable of re-entering and reworking such well and the timely prosecution of such actual reworking operations in good faith and with reasonable diligence and without cessation of more than sixty (60) days, toward the re-establishment of commercial production of oil or gas from such previously producing zone or zones.

F. "Producing Unit" means the following:

(i) With respect to vertical wells:

[a] A tract of land designated in writing by Lessee, as provided in this Lease,

containing no more than 80 acres on which Lessee has drilled and completed an oil well pursuant to the terms of this Lease and which is producing in paying quantities (provided that if the field rules of the Texas Railroad Commission applicable to wells which are completed in each of the Wolfcamp, Dean and Spraberry formations are modified or amended after the date of this Lease to provide that the standard proration unit for such wells shall be 40 acres, then and in that event, each Producing Unit for oil wells drilled by Lessee after the effective date of such modification or amendment of the applicable field rules shall contain no more than 40 acres, plus a tolerance of ten percent);

[b] A tract of land designated in writing by Lessee as provided in this Lease containing no more than 320 acres on which Lessee has drilled a gas well pursuant to the terms of this Lease and which is producing in paying quantities.

(ii) With respect to horizontal wells:

[a] As to horizontal wells, which are not drilled or produced pursuant to a pooled unit created under the terms of this Lease, a tract of land designated in writing by Lessee containing no more than the lesser of:

[I] Forty (40) acres plus the minimum additional acreage allowed for horizontal drain holes, as set forth in Rule 86 of the Texas Railroad Commission utilizing the Additional Acreage Assignment Table of Rule 86 for fields with a density rule of forty (40) acres or less, as set forth in Section 3.86, Chapter 3, Part 1, Title 16, of the Texas Administrative Code; or

[II] 320 acres.

[b] As to horizontal wells which are located within a valid pooled unit created under the terms of this Lease, the Producing Unit for purposes of this Lease shall be the portion of the leased premises comprising a part of such pooled unit.

A Producing Unit, whether for a vertical well or for a horizontal well, shall include only those depths and horizons from one hundred feet (100') above the top of the shallowest formation producing in the well for such Producing Unit down to one hundred feet (100') below the base of the deepest producing formation in such well.

G. "Surface Owner" shall mean the record owner of the fee interest in the surface estate of the tract of land described in Section 2 of this Lease.

H. "Disposition" shall mean when used in reference to Lessee's handling of production; the transaction, place and point in time whereby Lessee and its Affiliates finally and fully relinquish any beneficial ownership, rights or enjoyment of any substance produced under the terms of this Lease.

I. "Affiliate" or "affiliate" as used herein means and shall include each and every one of the following:

- (i) each individual, corporation, joint venture, trust, estate, partnership, limited liability company or other entity that owns or controls more than one percent (1%) of the outstanding voting securities or interest of Lessee; and
- (ii) each corporation, joint venture, trust, partnership, limited liability company or other entity in which Lessee or any current or past officer or director of Lessee owns or controls more than one percent (1%) of the outstanding voting

securities or interest.

2. Grant of Interest/Description.

A. Lessor, in consideration of a cash bonus in hand paid, of the royalties herein provided, and of the agreements of Lessee hereinafter contained, hereby grants, leases, and lets unto Lessee for the sole purpose of exploring for, drilling, operating, and producing oil and/or gas and of laying pipelines, temporarily storing oil, building one or more tank batteries, power lines, and roads thereon necessary to produce, save, care for, treat and transport the oil and/or gas produced from the land leased hereunder, the following described land situated in Upton County, Texas, (sometimes referred to hereinafter as the "leased premises") to wit:

Tract A: All depths lying below a depth of 9300 feet below the surface in the NE/4 and SW/4 of Section 32, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract B: All depths lying below the base of the Dean Sand Formation in the NW/4 and SE/4 of Section 32, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract C: All depths lying below the base of the Dean Sand Formation in the SW/4 NE/4 of Section 40, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract D: All depths lying below the base of the Dean Sand Formation in the SW/4 NW/4 of Section 40, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract E: All depths lying below the base of the Dean Sand Formation in the SW/4 of Section 41, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract F: All depths lying below the base of the Dean Sand Formation in the N/2 of Section 44, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract G: All depths lying below a depth of 9300 feet below the surface in the S/2 of Section 44, Block, 39, T-5-S, T&P Ry. Co. Survey.

Tract H: All depths lying below the base of the Dean Sand Formation in the NE/4 and SW/4 of Section 45, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract I: All depths lying below a depth of 9250 feet below the surface in the NW/4 and SE/4 of Section 45, Block 39, T-5-S, T&P Ry. Co. Survey.

B. This Lease is made subject to any and all easements, rights of way and other encumbrances burdening any part of the leased premises as shown of record in Upton County, Texas or apparent from a reasonable inspection of the leased premises.

C. By this Lease, Lessee acquires no right to construct, operate or maintain any treating or processing plant, dwelling house, lease house, camp, pipe yard, equipment yard, warehouse or similar structure on the leased premises and acquires no easement, express or implied, with respect to any land other than the leased premises.

D. Lessee specifically covenants and agrees that with respect to its performance of obligations (both express and implied) and exercise of rights and privileges arising under this Lease that Lessee shall conduct itself with respect to Lessor and the Surface Owners with the utmost good faith and fair dealing. Lessee further covenants and agrees to comply with all applicable local, state and federal laws, rules, and regulations.

3. Term. Subject to the provisions contained herein, this Lease shall be for a term of three (3) years from this date (called "primary term"), and for so long thereafter as oil and gas, or either of them, is produced in paying quantities from the leased premises.

4. **Surface Use Agreement.** Lessee's rights to utilize the surface estate in the leased premises as elsewhere described in this Oil and Gas Lease are expressly made subject to that certain Surface Use Agreement dated April 4, 2012, entered into by and between Connell-Cowden Ranch, LP, as Owner, and Apache Corporation, as Operator. It is understood and agreed that the execution and delivery of this Oil and Gas Lease is made conditional upon the execution and delivery of the Surface Use Agreement.

5. **Reservations.** There is EXCEPTED from this Lease and Lessor RESERVES unto Lessor and Lessor's heirs, successors, administrators and assigns:

A. all minerals except oil, gas and other liquid and gaseous substances and sulphur that are necessarily produced with such oil or gas;

B. equal and concurrent rights of occupancy, use and possession of the surface estate by (1) Lessor, (2) the Surface Owner and (3) Lessor's or the Surface Owner's other mineral, surface, grazing, agricultural and recreational lessees or assignees, together with the right of ingress to and egress from the leased premises for all purposes including exploring, developing and operating said leased premises for oil, gas and other minerals of whatever nature which are not covered by this Lease or which may hereafter be released from this Lease and, the sole and exclusive right, as between Lessor and Lessee, to complete water source wells on the leased premises and in any reservoir not productive of oil or gas for the purpose of obtaining water for domestic and agricultural use and consumption and for the exploration, development and operation of Lessor's reserved rights; provided, however, Lessor and Surface Owner agree not to use the surface of the premises affected hereby in any manner that will interfere unduly with any of Lessee's rights in exploring, developing, producing, transporting, and marketing oil, gas and other hydrocarbons under leased premises. As between mineral, surface, and agricultural lessees, access to the surface shall be based on the principle of first-in-time, first-in-right, but as between Lessee herein and subsequent mineral lessees, the leasehold estate created by this Lease shall be considered dominant;

C. all rights granted to Lessee in this Lease shall be limited to the leased premises and depths described and covered by this Lease together with such ingress to and egress from leased premises as designated by Lessor and shall not extend to and Lessor expressly reserves all rights, privileges and usage which relate to land not described herein or which may be released herefrom. It is understood and agreed that to the extent Lessee establishes roads, flowlines, pipelines or power lines across the leased premises in accordance with the terms and provisions of the Surface Use Agreement to service its operations on any of the following described tracts of land (the "Jointly Operated Acreage"), prior to any partial or total termination of this Lease, then and in that event, Lessee may nevertheless continue to use such established roads, flowlines, pipelines and power lines as originally configured for as long as any of the existing oil and gas leases (including this Lease and any oil and gas leases executed by Lessor to Lessee within (30) days from and after the date of this Lease) covering any portion of the Jointly Operated Acreage remains in force and effect; provided however it is expressly understood and agreed that Lessee's limited right to use the surface estate of the leased premises for roads, flowlines, pipelines and power lines across the leased premises for the benefit of Lessee's other leasehold operations on the Jointly Operated Acreage shall never be extended or construed to extend or be utilized by Lessee for the use or benefit of or as a convenience to Lessee in operating on lands not within the Jointly Operated Acreage, regardless of whether such lands not included within the Jointly Operated Acreage are owned by Lessor or any one or more of the Surface Owner or third parties:

- (i) W/2 of Section 48, Block 40, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (ii) SE/4 of Section 43, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (iii) Section 42, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (iv) Section 32, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

- (v) SW/4 NE/4 of Section 40, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (vi) SW/4 NW/4 of Section 40, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (vii) SW/4 of Section 41, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (viii) Section 44, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
- (ix) Section 45, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

6. **Partial Termination; Continuous Development; Retained Acreage and Depths.**

A. At the later to occur of the following: (i) the expiration of the primary term of this Lease, or (ii) the conclusion of the Lessee's continuous development program undertaken and prosecuted in accordance with the provisions of this Lease; this Lease shall terminate as to all of the leased premises not theretofore released, save and except the acreage and depths included in the Producing Unit(s) established by Lessee.

B. Each Producing Unit shall be in the form of a square or rectangle as nearly as is practicable with the well at a legal location on such Producing Unit and as nearly as possible in the center of such Producing Unit.

C. Lessee shall designate each Producing Unit in recordable form with such designation containing a metes and bounds description or other sufficient legal description of the Producing Unit's exterior boundaries and relevant depth limitations. Lessee shall place each designation of a Producing Unit of record in Upton County, Texas within sixty (60) days after the completion of the well for such Producing Unit and promptly provide to Lessor a certified copy of such recorded designation of Producing Unit; provided, however that during the existence (if any) of Lessee's continuous development program, Lessee may defer filing such designations until the continuous development program has been concluded at which time Lessee may file a single instrument which identifies and designates each Producing Unit situated on the leased premises.

D. Lessee shall, within sixty (60) days after termination of this Lease, as to any part of the leased premises, execute and furnish to Lessor a recordable release describing the acreage and/or depths as to which this Lease has terminated.

E. Subject to the provisions of Section 6.G. below, if at the expiration of the primary term of this Lease, Lessee is then engaged in drilling a well on the leased premises or if Lessee has completed a well as a commercial producer on the leased premises and such well is then still producing in paying quantities upon the expiration of the primary term of this Lease, Lessee shall have the right and option (but not obligation) to engage in a continuous development program on the leased premises by conducting a program of continuous drilling of new wells on the leased premises allowing no more than one hundred eighty (180) days to elapse between (i) the completion of one well as a well producing in paying quantities or as a dry hole, and (ii) the commencement of actual drilling operations on the next succeeding well. If a continuous development program is undertaken by the Lessee it shall be deemed to have been concluded on the earlier to occur of the following: (x) at such time as Lessee allows more than one hundred eighty (180) days to pass from the most recent completion of a new well on the leased premises without having commenced actual drilling operations on another new well; or (y) upon the date which is the tenth (10th) anniversary of the date on which the primary term of this Lease expired. It is understood and agreed that commencement of reworking operations or drilling, side tracking or deepening operations on a well previously completed pursuant to this Lease shall not constitute "commencement of actual drilling on the next succeeding well" so as to constitute continuous development.

F. If after the expiration of the primary term of this Lease or the conclusion of Lessee's continuous development program, whichever occurs later, any Producing Unit shall cease to produce

continuous development program, whichever occurs later, any Producing Unit shall cease to produce in paying quantities this Lease shall terminate as to such Producing Unit unless Lessee, within sixty (60) days after such cessation of production in paying quantities, commences reworking operations or commences actual drilling operations and thereafter diligently prosecutes the same or different reworking or actual drilling operations on such Producing Unit with no cessation of more than thirty (30) days until production in paying quantities is restored.

G. Notwithstanding anything herein to the contrary, on the date which is the tenth (10th) anniversary of the date on which the primary term of this Lease expires, this Lease shall terminate as to all acreage not then located within a Producing Unit.

H. Although this Lease may have terminated in part or may have been partially released, Lessee shall have and retain easements over and across the terminated portion or portions of the surface of the leased premises as shall be reasonably necessary for ingress and egress so as to enable Lessee to develop and operate the portion or portions of the leased premises as to which this Lease continues in effect and Lessee shall not be required to relocate any pipelines or roads solely because of the partial termination or partial release of this Lease.

7. Royalties. As royalty, Lessee covenants and agrees:

A. Oil. To deliver free of cost to Lessor at the location of the disposition of Lessee's oil and liquid hydrocarbons or to the credit of Lessor at the pipelines to which the wells may be connected, one-fourth (1/4) of all oil and other liquid hydrocarbons (recovered or separated on the leased premises) produced and saved from the leased premises; or, at the Lessor's option, which may be exercised from time to time, Lessee shall pay to Lessor the same percentage of the market value at the point of Lessee's disposition of its oil and liquid hydrocarbons for such oil and other liquid hydrocarbons of like grade and gravity prevailing in the area on the day such oil and other hydrocarbons are run; provided, however, there shall be no deduction from the value of Lessor's royalty by reason of any processing, treatment, trucking, transportation or other cost to market such oil and other liquid hydrocarbons. If Lessee or any Affiliate of Lessee engages in any "downstream marketing" of oil or other liquid hydrocarbons, from the leased premises, including receiving payments for aggregating such substances with oil or liquid hydrocarbons produced from other tracts of land, then and in that event, Lessee shall fully disclose any such contractual or other marketing arrangements and shall include in its payment of royalties on oil the share of the payments or value of any other consideration received in connection with or for such arrangements on the basis that the production from and attributable to this lease bears to the total volume of production the disposition for which Lessee or any of its Affiliates received any "bonuses", "marketing fees", "aggregation fees" or the like.

B. Gas. To pay the Lessor:

(i) On gas produced from the leased premises which is processed in a processing plant in which Lessee or any parent, subsidiary or affiliate of Lessee has a direct or indirect interest, Lessor shall receive the higher of (a) one-fourth (1/4) of the market value of such gas at the inlet to the processing plant, or (b) one-fourth (1/4) of the market value of all processed liquids saved from said gas at the point of disposition for Lessee's share of processed liquids, plus one-fourth (1/4) of the market value of all residue gas at the point of sale, use or other disposition.

(ii) On gas produced from the leased premises, which is processed in facilities other than a processing plant in which Lessee or any parent, subsidiary or affiliate of Lessee has a direct or indirect interest, Lessor shall receive one-fourth (1/4) of the market value at the point of disposition of Lessee's liquids of all processed liquids credited to the account of Lessee and attributable to such gas, plus one-fourth (1/4) of the market value of all residue gas at the point of sale, use or other disposition.

(iii) On all gas produced from the leased premises, and sold by Lessee or used on or off the leased premises, and to which the preceding subparagraphs (i) and (ii) above do not apply, Lessor shall receive one-fourth (1/4) of the market value at the point of use or other disposition of all such gas.

C. The market value of all gas shall be determined at the specified location and by reference to the gross heating value (measured in British thermal units) and quality of the gas. The market value used in the calculation of all royalty under this Lease shall never be less than the total proceeds received by Lessee in connection with the sale, use or other disposition of oil or gas produced or sold from the leased premises. If Lessee receives from a purchaser of oil or gas any reimbursement for all or any part of severance or production taxes, the proportionate part of such reimbursement amount shall be added to the total proceeds received by Lessee for purposes of this subsection. If Lessee realizes proceeds of production after deduction of any expenses of production, gathering, dehydration, separation, compression, transportation, treatment, processing, storage or marketing, then the proportionate part of such deductions shall be added to the total proceeds received by Lessee for purposes of this Section 7.C.

D. Notwithstanding anything to the contrary, Lessor's royalty shall never bear, either directly or indirectly, any part of the costs or expenses of production, separation, gathering, dehydration, compression, transportation, trucking, processing, treatment, storage or marketing of the oil or gas produced from the leased premises, nor any part of the costs of construction, operation or depreciation of any plant or other facilities or equipment used in the handling of oil or gas produced from the leased premises. Royalty shall be payable on oil, gas and other products produced from the leased premises and consumed by Lessee on the leased premises, whether for compression, dehydration, fuel or other uses. It is understood and agreed that as to gas volumes produced from the leased premises which are reinjected by Lessee into a producing formation in the leased premises for the purpose of pressure maintenance or re-pressuring such formation with Lessee having the good faith belief that such re-injection will result in the enhancement of the overall recovery of royalty-bearing hydrocarbons from this Lease, then and in that event Lessee shall not be required to pay royalties on such re-injected gas volumes.

E. If the gas produced from the leased premises is sold by Lessee pursuant to an arms-length contract with a purchaser which is not an affiliate of Lessee, and the contract provides for (i) net proceeds to be paid to Lessee which equal or exceed the market value of the gas at the point of delivery to such purchaser at the time such contract is entered into, and (ii) a term no longer than that which is usual and customary in the industry at the time the contract is made and such contract provides for redetermination of price to reflect increases in the market value of natural gas not less frequently than annually, then the market value of the gas sold pursuant to such contract shall be the total proceeds received by Lessee in such sale, subject to the provisions of Section 7.C. and 7.D. above.

8. Payment of Royalties. With respect to each well on the leased premises, initial royalty payments for oil and/or gas shall be made on or before the end of the fourth (4th) calendar month following the month of first production. Thereafter, all royalties which are required to be paid hereunder to Lessor shall be due and payable in the following manner: Royalty on oil shall be due and payable on or before the fifth (5th) day of the second (2nd) calendar month following the month production is sold, and royalty on gas shall be due and payable on or before the fifteenth (15th) of the third (3rd) calendar month following the month of production. Each royalty payment shall be accompanied by a check stub, schedule, summary or remittance advice identifying the Lease and showing the gross amount and disposition of all oil and gas produced and the market value of the oil and gas. A copy of all contracts under which gas is sold or processed and all subsequent agreements and amendments to such contracts shall be delivered to Lessor within thirty (30) days after entering into or making such contracts, agreements or amendments. The books, accounts and all other records pertaining to production, transportation, sale and marketing of oil or gas from the leased premises shall at any time during normal business hours be subject to inspection and examination by Lessor. If payments to be made by Lessee to Lessor are not made when due for whatever reason, the unpaid portion shall bear interest at the lower of Twelve Percent per annum (12%) or the highest rate allowed by law. If Lessee is in default hereunder and this matter is turned over to an attorney for collection, or is collected by suit, Lessee agrees to pay all reasonable attorney's fees and litigation expenses incurred by Lessor. Payments may be remitted to Lessor annually for the aggregate of up to twelve (12) months' accumulation of proceeds if the total amount owed is \$25.00 or less.

9. Limitation of Oil and Gas. This Lease is intended to cover only oil and gas, but some other substances (including helium and sulphur) may be produced necessarily with and incidental to the

production of oil or gas from the leased premises; and, in such event, this Lease shall also cover all such other substances so produced. On all such substances produced under and by virtue of the terms of this Lease, Lessor shall receive a royalty of one-fourth (1/4) of all such substances so produced and saved, same to be delivered to Lessor, free of all costs; or, at Lessor's election, Lessor's one-fourth (1/4) of such substances shall be sold by Lessee with Lessee's portion of such substances and at the same price realized by Lessee in its disposition of its portion of such substances.

10. Gas Contracts: Contracts for Sale or Other Disposition of Production.

A. Each and every contract or agreement entered into by Lessee for or relating to the sale, processing or other disposition of production from or attributable to this Lease shall contain provisions sufficient to accommodate the Lessor's full exercise of its rights and privileges with respect to its royalty share of production including, but not limited to, those set forth in Section 12 of this Lease.

B. In the event Lessee enters into a contract for the sale of gas produced from or attributable to this Lease (including the Lessor's royalty share of gas) which contract contains what is commonly referred to as a "take or pay provision" (such provision meaning that the gas purchaser agrees to take delivery of a specified minimum volume or quantity of gas over a specified term at a specified price or to make minimum periodic payments to the producer for gas not taken by purchaser) and the purchaser under such gas purchase contract makes payments to Lessee by virtue of such purchaser's failure to take delivery of such minimum volume or quantity of gas, then Lessor shall be entitled to one-fourth (1/4) of all sums paid to producer under the provisions of such contract. Such royalty payments shall be due and owing to Lessor within sixty (60) days after Lessee's receipt of such payments from its purchaser. Any royalty payments made to Lessor under the "pay" obligation of any "take or pay" gas contract shall be applied as a credit toward Lessee's minimum royalty obligation. If the gas purchaser which has made any such "take or pay" payments to Lessee is entitled to and does "make-up" volumes of gas within the recoupment period called for in the gas contract and Lessee is required to give such purchaser a credit for those volumes of gas previously paid for but not taken, then Lessor shall not be entitled to royalty on such "make-up" gas, except to the extent necessary for Lessor to receive its full royalty share of the market value of such gas in accordance with Section 7.

C. To the extent Lessor's royalty share of oil, gas, natural gas liquids or any other substance produced and saved from the leased premises is covered or included by Lessee in any contract for the sale, processing or other disposition of production from or attributable to this Lease, Lessor shall be an intended third-party beneficiary of any such contract regardless of any provision of such contract(s) to the contrary. Further, Lessor shall be entitled to one-fourth (1/4) of the value of any benefits obtained by or granted to Lessee in connection with the Lessee's execution, amendment, modification, extension, cancellation, waiver, or settlement of any such contract.

11. Separation of Liquids. All gas produced from the leased premises shall, before the same is sold or used for any purpose or is transported from the leased premises be passed through a mechanical separator system situated on the leased premises designed and operated to effect the maximum economical recovery of liquid hydrocarbons therefrom. All condensate, distillate, natural gasoline, kerosene and all other liquid hydrocarbons and mixtures thereof produced with gas from the leased premises and separated from such shall be considered oil for all purposes of Section 7.A. above.

12. Right to Take Production in Kind. Lessor shall always have the right, at any time and from time to time, upon reasonable written notice to Lessee, to take Lessor's share of oil, gas and processed liquids in kind. Lessor may elect to take Lessor's gas in kind at the well, or at the point of delivery where Lessee delivers Lessee's gas to any third party. If gas is processed, Lessor may elect to take Lessor's share of residue gas attributable to production from the leased premises, at the same point of delivery where Lessee receives its share of residue gas or has its share of residue gas delivered to a third party. Lessor may elect to have its royalty share of processed liquids stored in tanks at the plant or delivered into pipelines on the same basis as Lessee's share of liquids is stored or delivered. Lessor shall reimburse Lessee for all reasonable costs incurred by Lessee in operating or maintaining additional facilities necessary for Lessor's royalty gas and processed liquids to be separately metered,

accounted for, and delivered to a third party, but Lessor shall not be charged for any expense in the production, gathering, dehydration, separation, compression, transportation, treatment, processing or storage of Lessor's share of gas and processed liquids along with Lessee's share of gas and processed liquids.

13. Shut-in Gas Well Payments. If after the expiration of the primary term there is a gas well on the leased premises capable of producing in paying quantities but the production thereof is shut-in, shut-down or suspended for lack of a market, available pipelines, or because of government restrictions or, if it is economically inadvisable for both the Lessor and Lessee to sell gas for a time as evidenced by a written agreement signed by both parties, then, and in any such event, Lessee may pay as shut-in royalty on or before sixty (60) days after the date on which (a) production from any such well is shut-in, shut-down or suspended; or (b) this Lease is no longer maintained by compliance with one of the other preservation provisions hereof, whichever is the later date and thereafter at annual intervals the sum of Twenty Five Dollars (\$25.00) per net mineral acre per Producing Unit per well, or Five Hundred Dollars (\$500.00) per well whichever is greater, for each and every shut-in, shut-down or suspended well. If such payment is made in accordance with the terms hereof, this Lease shall not terminate, but shall continue in force for a period of one (1) year from the date of making such shut-in payment (subject to the exceptions set out hereafter) and it will be considered that gas is being produced from the leased premises in paying quantities within the meaning of each pertinent provision of this Lease. Provided, however, in no event shall shut-in well payments maintain this Lease in force for any single period exceeding two (2) years nor shall Lessee be entitled to utilize shut-in gas well payments to maintain any part of this Lease if this Lease has theretofore been maintained in whole or in part by the payment of shut-in gas well payments for a cumulative length of time exceeding four (4) years. Any shut-in royalty payment shall not be a credit against production nor be credited with prior production royalty. In the event that production is begun or resumed during the year following the payment of a shut-in royalty payment and is subsequently shut-in, during such year the second annual shut-in payment shall be due and payable on the anniversary date of the first payment. If there is production on such first anniversary date and the well is subsequently shut-in, shut-down or suspended, then the second shut-in payment shall be made on or before sixty (60) days after such new shut-in date or the Lease shall terminate. Notwithstanding anything to the contrary set out above, a proper shut-in gas well payment will maintain the rights granted by this Lease only to the Producing Unit(s) of such gas well(s) as if they were producing gas in paying quantities pursuant to Section 2 above. Should such shut-in gas well payments not be made in a timely manner as provided for above, then, in that event, it shall be considered for all purposes that there is no production of gas from any such well or wells and, unless this Lease is being maintained by another preservation provision hereof, this Lease shall terminate automatically at midnight on the last day provided for the payment of such shut-in royalties, and Lessee shall thereupon furnish to Lessor a release of all of its interest in and to the Producing Units containing a shut-in gas well.

14. Pooling.

Vertical Wells. Unless Lessee obtains the prior written consent of Lessor, Lessee shall have no authority under this Lease to pool all or any portion of the leased premises with other acreage, tracts, interests or leases for the purposes of drilling or producing from a vertical well.

Horizontal Wells. Lessee, at its option, is granted the right and power to pool or combine Lessor's interest in the leased premises, or any portion thereof, as to oil and gas, or either of them, with other contiguous land, lease or leases, to form a pooled unit for a horizontal well, when in Lessee's judgment it is necessary or advisable to do so in order to properly explore, develop and operate the leased premises in compliance with the spacing and density rules of the Railroad Commission of Texas, or other lawful authority, or when to do so would, in the judgment of Lessee, promote the conservation of the oil and/or gas in and under and that may be produced from the portion of the leased premises to be included in such a pooled unit for a horizontal well.

A pooled unit created for a horizontal well under this Lease may contain no more than the lesser of:

- (a) Forty (40) acres plus the minimum additional acreage allowed for horizontal

drain holes, as set forth in Rule 86 of the Texas Railroad Commission utilizing the Additional Acreage Assignment Table of Rule 86 for fields with a density rule of forty (40) acres or less, as set forth in Section 3.86, Chapter 3, Part 1, Title 16, of the Texas Administrative Code; or

(b) 320 acres.

Lessee shall execute in writing an instrument identifying and describing the pooled acreage, the leases and interests so pooled, the zones, substances, formations and depths covered by the pooled unit and record such instrument in the county or counties in which the pooled land is situated. The pooled unit shall be effective on the date such instrument is filed of record. A copy of such recorded instrument, and all amendments thereof, shall be furnished to Lessor within thirty (30) days from and after the respective effective date of such instrument(s).

Production from or drilling or reworking operations on any horizontal well on such pooled unit shall be treated as production from or drilling or reworking operations on the portion of the leased premises included in such pooled unit, provided, however, notwithstanding anything else in this Lease to the contrary, production from or drilling or reworking operations on any pooled unit established hereunder shall not be treated as or constitute production from, or drilling or reworking operations on any portion of the leased premises not included within such pooled unit. This Lease may be continued in force and effect as to portions of the leased premises not included in a pooled unit only as provided elsewhere in this Oil and Gas Lease.

Unless otherwise stated herein, there shall be allocated to this Oil and Gas Lease the proportion of the total production from the pooled unit that the number of surface acres covered by this Oil and Gas Lease and included in the pooled unit bears to the total number of surface acres in such pooled unit; and royalties shall be paid hereunder only upon that portion of total pooled unit production so allocated.

Any pooled unit designated by Lessee in accordance with the provisions of this Lease shall automatically terminate upon the completion of a dry hole on the pooled unit or upon the cessation of production in commercial quantities from said pooled unit unless Lessee commences additional operations or restores production on the pooled unit within the applicable time period required for operations provided in Section 6.F. of this Lease. Lessee may dissolve a pooled unit designated in accordance with this Lease at any time after the completion of a dry hole or cessation of production in commercial quantities from such pooled unit.

15. **Assignability.** The rights of either party hereunder may be assigned in whole or in part and the provisions hereof extend to the heirs, executors, administrators, successors and assigns of the parties hereto; provided, however, that any such assignment by Lessee shall require the prior written consent of Lessor, provided further, however that such consent shall not be unreasonably withheld. Lessor's consent to any assignment shall not constitute consent to any other assignment. Lessee shall furnish Lessor a copy of any assignment made pursuant to this section, with the recording data reflected thereon (if recorded). Assignment of this Lease or any part thereof shall not relieve Lessee, its assignees, or any subassignees of any obligations hereunder, theretofore accrued or to accrue in the future; and any assignee of Lessee shall, by acceptance of such assignment, be bound by all terms and provisions hereof. The term "assignment" as used herein, shall include, without limitation, any sublease, farmout, or any other agreement by which any share of the operating rights granted by this Lease are assigned or conveyed, or agreed to be assigned or conveyed, to any other party.

No change or division in ownership of the leased premises, rentals or royalties however accomplished shall operate to enlarge the obligations or diminish the rights of Lessee, nor shall any such change or division be binding upon Lessee for any purpose until the person acquiring any interest has furnished Lessee with a true and correct copy of the instrument or instruments constituting his chain of title from Lessor.

16. **Duty to Develop.** The drilling of a well or wells within the broad language of this Lease shall not be construed as an agreement or construction on the part of Lessor that such drilling would constitute reasonable development of the leased premises, or such portion or portions thereof as may

be in force from time to time, as may be necessary to reasonably explore and develop the same for the production of oil and gas. In the event a well or wells producing oil or gas should be brought in on adjacent land and draining the leased premises, Lessee agrees to drill such offset wells as a reasonable prudent operator would drill under the same or similar circumstances. If oil and/or gas are discovered on the land covered by this Lease, Lessee agrees to further develop said land covered by this Lease as a reasonable prudent operator would under the same or similar circumstances.

17. **Surface Damages and Restoration.** Lessee's obligations with respect to its use of the surface estate in the leased premises is governed by that certain Surface Use Agreement between Lessee and the Surface Owner of even date herewith which is incorporated herein by reference for all purposes.

18. **Water.** Lessee's rights and interests to utilize potable ground water from the acreage covered by this Lease shall be restricted to those rights and interests more fully described in the Surface Use Agreement; otherwise by this Lease, Lessee does not (expressly or by implication or by operation of law) acquire any title to or right to use for any purpose, any water located in, on or under the leased premises.

19. **Division Orders.** Division orders or transfer orders, if executed, shall be solely for the convenience of the parties for the purpose of confirming the extent of Lessor's interest in production of oil and gas from the leased premises. No term or provision of this Lease shall be altered, amended, extended or ratified by any division order or transfer order. Any amendment, alteration, extension or ratification of this Lease or of any term or provision of this Lease shall be made by an instrument in writing clearly denominated as to its purpose and effect, describing the specific terms or provisions of the Lease affected and the proposed change or modification, and executed by the party against whom the amendment, alteration, extension, or ratification is to be enforced, any amendment, alteration, extension or ratification not so drafted and executed shall be of no force or effect.

20. **Information Requirements.**

A. Lessee shall furnish to the designated representative of Lessor (such representative initially designated to be Jacqueline Montoya of Las Vegas, Nevada, at or within the times indicated, a true and correct copy of each of the following:

(i) Any contract under which gas is sold or processed and any amendment to contract, within thirty (30) days after entering into the contract or amendment.

(ii) Each week, the daily drilling reports covering each well being drilled on the leased premises during the preceding week.

(iii) Simultaneously with its filing, any document affecting the leased premises and which is filed by Lessee with the Texas Railroad Commission or any other regulatory agency.

(iv) As soon as completed, final prints of all driller's logs, electrical logs and surveys obtained in drilling any well on the leased premises, any core analysis and test results obtained from any well on the leased premises, and Lessee's interpretation of all data obtained in Lessee's exploration operations on the leased premises.

(v) As soon as obtained by or on behalf of or made available to Lessee, any title opinion covering all or any part of the leased premises and obtained by or on behalf of or made available to Lessee while this Lease is in effect.

(vi) As soon as entered into, any permitted farm out agreement which is not filed for record.

(vii) With each royalty payment, a check stub, schedule, summary or other remittance advice showing the production period covered by the payment, gross production for the period, the amounts of any deductions and the amount of royalty being paid.

B. Lessee shall furnish to Lessor, as soon as the recording data is available for inclusion, a true and correct photocopy of this Lease, any release of this Lease in whole or in part, any permitted farm out agreement which is filed for record and any permitted assignment of this Lease in whole or in part. In each case where such instruments are to be recorded, the copy provided to Lessor shall reflect the recording data for such instrument.

C. Lessor, at Lessor's risk, shall have access to the derrick floor and all other areas at all times during any operations conducted by Lessee on the land. Lessee shall advise Lessor of the size of chokes installed on all producing wells on the leased premises at all times, together with appropriate pressure information to permit Lessor to check the rate of production from the wells. Lessor shall have the right to strap all storage tanks and read and check all meters and charts affixed to any producing well at reasonable times without previous notice to Lessee, and Lessor may, at Lessor's expense, install check meters on or otherwise check any producing well or wells located on the leased premises.

D. During Lessee's regular office hours, Lessor shall have access to and may inspect and copy all information concerning the drilling, coring, testing and completing of all wells, including the driller's log and all electrical logs and surveys, and all accounting books and records, production charts, records and information, concerning the production, transportation and marketing of oil and gas from the leased premises, and during and for five (5) years after expiration of the primary term of this Lease, all of the following data obtained as a result of Lessee's operations under this lease: all seismic, gravity meter and similar exploration data obtained by Lessee in its exploration of the leased premises so as to permit Lessor to make its own evaluation and interpretation of the data.

E. Lessee shall notify Lessor at least thirty (30) days in advance (exclusive of Saturdays, Sundays and legal holidays) of the time and date of the proposed plugging of any well which has produced, so as to allow Lessor to observe and inspect the plugging operations.

21. **INDEMNIFICATION.** LESSEE, ITS SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, DEFEND AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, LIABILITIES, FINES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES AND LITIGATION EXPENSES) (COLLECTIVELY "CLAIMS") RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH OPERATIONS OF OR FOR LESSEE, ITS AGENTS, CONTRACTORS, OR SUBCONTRACTORS HEREUNDER, INCLUDING CLAIMS ARISING OUT OF LESSOR'S NEGLIGENCE PROVIDED HOWEVER, THAT THE LESSEE'S OBLIGATIONS UNDER THIS SECTION 21 SHALL NOT APPLY TO CLAIMS THAT ARISE SOLELY OUT OF LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS PROVISION AND ITS INDEMNITIES SHALL SURVIVE THE TERMINATION OF THIS LEASE AND SHALL INURE TO THE BENEFIT OF AND BE BINDING UPON THE RESPECTIVE SUCCESSORS, HEIRS AND ASSIGNS OF LESSOR AND LESSEE.

22. **Special Warranty of Title.** Lessor warrants title to the undivided fractional mineral fee interest it owns of record as of the date of this Lease and which is covered by this Lease subject to the reservations, exceptions and other provisions hereof, unto Lessee from and against the claims of persons claiming or to claim the same or any part thereof during the term of this Lease by, through and under Lessor, but not otherwise. Lessor agrees that Lessee, at its option after Lessee has given Lessor sixty (60) days' written notice, may discharge any tax, mortgage or other lien upon Lessor's interest in the lease premises, either in whole or in part, and in the event Lessee does so, it shall be subrogated to such lien with right to enforce same, subject to any defenses of Lessor, and apply royalties accruing hereunder toward satisfying same.

23. **Proportionate Reduction for less than Entire Interest.** It is agreed that if Lessor owns an interest in oil and gas in and under any of the leased premises which is less than the entire oil and gas fee simple estate, then the royalties on production shall each be reduced by the proportion thereof which the mineral fee estate of Lessor in such land bears to the entire mineral fee estate, provided that in no event shall there be any refund of any amounts previously paid to Lessor as bonus, or shut-in gas well payments.

24. COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS. LESSEE, ITS SUCCESSORS AND ASSIGNS, BY ITS ACCEPTANCE OF THIS LEASE, HEREBY AGREES TO COMPLY WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS AND HEREBY ASSUMES FULL RESPONSIBILITY FOR, AND AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS, LESSOR FROM AND AGAINST ANY LOSS, LIABILITY, CLAIM, FINE, EXPENSE AND COSTS (INCLUDING REASONABLE ATTORNEYS FEES AND LITIGATION EXPENSES) AND CAUSE OF ACTION (COLLECTIVELY "ENVIRONMENTAL CLAIMS") CAUSED BY OR ARISING OUT OF THE VIOLATION (OR DEFENSE OF THE ALLEGED VIOLATION) OF ANY FEDERAL, STATE OR LOCAL LAWS, RULES OR REGULATIONS APPLICABLE TO ANY WASTE MATERIAL, DRILLING MATTOR OR FLUID OR ANY HAZARDOUS OR TOXIC SUBSTANCES RELEASED OR CAUSED TO BE RELEASED BY LESSEE OR LESSEE'S AGENTS, OR INDEPENDENT CONTRACTORS FROM THE LEASED PREMISES HEREUNDER INTO THE ATMOSPHERE OR INTO OR UPON THE LEASED PREMISES OR ANY WATER COURSE OR BODY OF WATER, INCLUDING GROUND WATER, INCLUDING ENVIRONMENTAL CLAIMS ARISING OUT OF LESSOR'S NEGLIGENCE; PROVIDED, HOWEVER, THAT LESSEE'S OBLIGATIONS UNDER THIS SECTION 24 DO NOT APPLY TO ENVIRONMENTAL CLAIMS THAT ARISE SOLELY OUT OF LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. ADDITIONALLY, UPON RECEIVING ANY NOTICE REGARDING ANY ENVIRONMENTAL, POLLUTION OR CONTAMINATION PROBLEM OR VIOLATION OF ANY LAW, RULE OR REGULATION, LESSEE WILL FORWARD A COPY TO LESSOR BY CERTIFIED MAIL. THIS PROVISION AND ITS INDEMNITIES SHALL SURVIVE THE TERMINATION OF THIS LEASE, AND SHALL INURE TO THE BENEFIT OF AND BE BINDING UPON THE RESPECTIVE SUCCESSORS, HEIRS AND ASSIGNS OF LESSOR AND LESSEE.

25. No Salt Water or Waste Injection Wells. Lessee shall not be permitted to dispose of salt water or produced wastes or wastes of any kind into any formation or strata on this Lease, provided however Lessee may inject salt water produced from the leased premises into a well located thereon that has been drilled by Lessee or an existing wellbore that Lessee has converted into a disposal well, provided that Lessor's written consent is first obtained (such consent not to be unreasonably withheld). If and when requested by Lessor, Lessee shall demonstrate to Lessor's reasonable satisfaction that any such disposal or injection well is in compliance with all relevant laws and regulations concerning protection of ground water resources.

26. Timely Plugging and Abandonment of Wells. Without prior written consent of the Lessor, Lessee shall not allow any well located on the leased premises to remain in a shut-in, temporarily abandoned or otherwise non-productive state for a period of more than twelve (12) months without beginning plugging and abandonment operations with respect to the well and restoring the location, and providing that these procedures must be completed within two (2) months of their initiation. The only exception to this shall be gas wells capable of production which are shut-in pursuant to the provisions above regarding shut-in gas well payments, and for which shut-in gas well payments are being made in accordance with those same provisions. The obligations of Lessee, (and the concomitant rights of the Lessor), under this provision concerning the proper plugging and abandonment of wells and restoration of the surface of the leased premises shall survive the termination of this Lease, and shall inure to the benefit of and be binding upon the respective successors, heirs and assigns of Lessor and Lessee.

27. Alteration/Modification. The terms of this Lease cannot be altered or amended except by a written instrument clearly demonstrating such purpose and effect, and executed by both parties to this Lease. The written instrument shall describe the specific terms or provisions being altered and the proposed modification or change thereto. Any notation or legend attached to a royalty check shall be null and void and without legal significance for the purpose of altering this Lease.

28. Recording Memorandum. It is understood and agreed that Lessee may, if it so chooses, file a Memorandum of this Lease in the real property records of Upton County, Texas, such Memorandum to describe the Leased Premises and identify the primary term and Lessor(s) and Lessee(s) who execute this Lease. Such a recording Memorandum will be executed and acknowledged by each of the parties hereto and shall disclose the existence of the continuous development program called for

in this Lease.

29. **Counterparts.** This Lease may be executed in multiple counterparts each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.

30. **GOVERNING LAW; VENUE.** THIS LEASE SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS. THE VENUE FOR ANY ACTION TO ENFORCE OR CONSTRUE THE TERMS AND PROVISIONS OF THIS LEASE SHALL BE IN THE STATE COURTS OF UPTON COUNTY, TEXAS.

31. **Separate Tracts/No Communitization.** If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interest as between any such separate tracts is intended or shall be implied, or result from, the inclusion of such separate tracts within this Lease. As used in this paragraph, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to the parties or amounts, from that as to any other part of the leased premises. Lessor has included multiple tracts under this Lease for the convenience of Lessor and Lessee, with the express agreement and stipulation that this Lease is not a "community lease" and that no communitization of royalty interest shall occur and that each separate tract shall be, for purposes of calculating and paying of royalty interest, considered a separate lease.

32. **Lease Bonus for Excess Acreage.** In the event during the primary term of this Lease it is discovered by Lessor or Lessee that this Lease actually covers more net mineral acres in the leased premises than such parties believed to be covered by this Lease at the time of its execution and delivery, and Lessor provides reasonable documentary proof of the existence of such excess net mineral acreage, then and in that event Lessee agrees to pay to Lessor an additional lease bonus consideration equal to the sum arrived at by multiplying the number of excess net mineral acres times the agreed per acre lease bonus consideration paid at the time of the execution and delivery of this Lease.

33. **Notices.** Any notice permitted or required under the terms and provisions of this Lease shall be in writing signed by or on behalf of the party giving notice and properly addressed and delivered to the recipient party utilizing the following address and contact information. Each notice under this Lease shall be sent by certified mail, return receipt requested, by facsimile transmission (fax), or by commercial overnight courier. A notice sent by mail shall be deemed to have been received (if properly addressed, with postage prepaid) no later than three (3) Business Days after it is postmarked, while notices sent by commercial overnight courier shall be deemed to have been delivered when actually received.

Notices to the Lessor(s) and Lessee(s) respectively, shall be addressed as follows:

If to Lessor:

Eleanor C. Hartman, Individually and as
Trustee of the W. N. Connell and
Marjorie T. Connell Living Trust
Agreement dated May 18, 1972
P.O. Box 710
~~Las Vegas, Nevada 89125-0710~~

See attached addendum.

If to Lessee:

Apache Corporation
303 Veterans Airpark Lane, Suite 3000
Midland, Texas 79705

IN WITNESS WHEREOF, this instrument is dated as of the date first written above.

LESSOR

By: Eleanor C. Hartman Individually and as
Eleanor C. Hartman, Individually and as
Trustee of the W. N. Connell and Marjorie T. Connell Living Trust under Trust Agreement dated May 18, 1972 Trustee

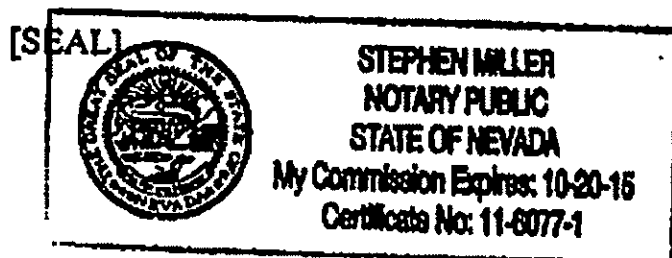
LESSEE

APACHE CORPORATION

By: _____
Printed Name: _____
Title: _____

THE STATE OF NEVADA §
§
COUNTY OF CLARK §

The foregoing instrument was acknowledged before me this 24th day of April, 2012, by Eleanor C. Hartman, Individually and as Trustee of the W. N. Connell and Marjorie T. Connell Living Trust under Trust Agreement dated May 18, 1972.



[Signature]
Notary Public in and for the State of Texas Waverly
Printed Name of Notary: Stephen Miller
My commission Expires: 10-20-15

THE STATE OF TEXAS §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this _____ day of April, 2012, by _____ of Apache Corporation, a Delaware corporation, on behalf of said corporation.

[SEAL]

Notary Public in and for the State of Texas
Printed Name of Notary: _____
My commission Expires: _____

**ADDENDUM TO:
OIL AND GAS LEASE**

Replace addresses in paragraph 33 Notices on Page 14.

SIGNED 4-4-2012

Notices to Lessor and Lessee(s), respectfully, shall be addressed as follows:

If to Lessor:

Eleanor C. Hartman, Individually and as Trustee of the
W. N. Connell and Marjorie T. Connell
Living Trust under Trust Agreement dated May 18, 1972
8635 West Sahara Avenue, #549
The Lakes, Nevada 89117-5858

If to Lessee:

Apache Corporation 303 Veterans Airpark Lane, Suite 3000 Midland, Texas 79705

LESSEE

APACHE CORPORATION

BY: Timothy R. Custer
NAME: TIMOTHY R. CUSTER
Title: ATTORNEY IN FACT

LESSOR

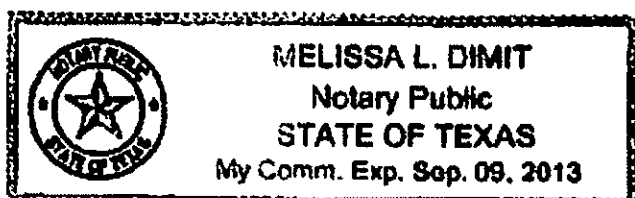
BY: Eleanor C. Hartman, Trustee

Eleanor C. Hartman, Individually and as Trustee of the
W. N. Connell and Marjorie T. Connell
Living Trust Agreement dated May 18, 1972
8635 West Sahara Avenue, #549
The Lakes, Nevada 89117-5858

State of TEXAS
County of MIDLAND

The foregoing instrument was acknowledged before me
this 10th day of July, 2012, by Timothy R. Custer, Attorney
in Fact of Apache Corporation, a Delaware corporation, on
behalf of said corporation.

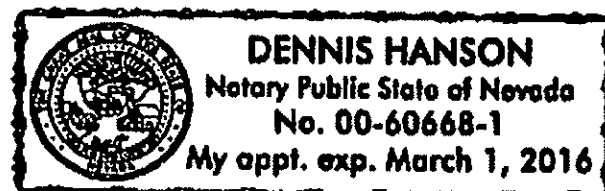
Melissa L. Dimit
Notary Public in and for the State of Texas
Printed Name of Notary: Melissa L. Dimit
My commission expires: 9/9/2013



NOTARY Nevada

State of Nevada
County of Clark
this document was acknowledged
before me this May 23rd 2012, by
Eleanor C. Hartman

Dennis Hanson
Notary Public



OIL AND GAS LEASE

STATE OF TEXAS
COUNTY OF UPTON

§
§
§

THIS AGREEMENT, made and entered into as of the 4th day of April, 2012, by and between the undersigned party or parties designated as Lessor on the signature page of this Lease (such party or parties hereinafter called "Lessor") and the undersigned party or parties designated as Lessee on the signature page of this Lease (such party or parties hereinafter called "Lessee").

1. **Definitions.** As used in this Lease, the following words and phrases shall have the meaning set forth below:

A. "commence a well", "commencement of a well", "commence actual drilling operations", "commencement of actual drilling operations", "actual drilling" or "actual drilling of a well" shall be deemed to occur at such time as there has been erected on the leased premises at the location for the well, a derrick, a rig and machinery capable of drilling to the base of the objective formation, the well has been "spudded-in" and the machinery for drilling is rotating under power.

B. "completion" or "completion of a well" shall be deemed to occur on (i) the date which is ninety (90) days after the production casing and/or liner has been run in the hole, (ii) the date which is ninety (90) days after total depth of the well in question has been reached, or (iii) the date indicated in the completion report for the well which is filed with the Railroad Commission, whichever is the earliest date.

C. The date of abandonment of a dry hole is the date indicated on the Texas Railroad Commission plugging report for the well or thirty (30) days after total depth is reached, whichever is the earlier date.

D. "production", "producing", "production in paying quantities", "commercial production", "production in commercial quantities", "producing in paying quantities" and "producing in commercial quantities" shall have the same meaning for purposes of this Lease, namely production in quantities sufficient to yield a return to the holders of the working interest excluding severance taxes, in excess of operating expenses, royalties and expenses of equipment beyond the wellhead and costs including depreciation of assets ("depreciation of assets" shall be the actual loss of fair market value of salvable equipment on the leased premises during the relevant period), even though drilling costs may never be recouped by working interest owners. The review period for purposes of determining whether production is in paying or commercial quantities shall be one hundred twenty (120) consecutive days. There shall be no review period when production ceases. Production in less than paying or commercial quantities shall never be considered as production for purposes of this Lease.

E. "operations for reworking", "reworking operations", "commencement of reworking operations", "commence reworking operations", "commence reworking operations" and "actual reworking operations" shall have the same meaning being the actual re-entry into an existing wellbore with a drilling or workover rig capable of re-entering and reworking such well and the timely prosecution of such actual reworking operations in good faith and with reasonable diligence and without cessation of more than sixty (60) days, toward the re-establishment of commercial production of oil or gas from such previously producing zone or zones.

F. "Producing Unit" means the following:

(i) With respect to vertical wells:

[a] A tract of land designated in writing by Lessee, as provided in this Lease,

containing no more than 80 acres on which Lessee has drilled and completed an oil well pursuant to the terms of this Lease and which is producing in paying quantities (provided that if the field rules of the Texas Railroad Commission applicable to wells which are completed in each of the Wolfcamp, Dean and Spraberry formations are modified or amended after the date of this Lease to provide that the standard proration unit for such wells shall be 40 acres, then and in that event, each Producing Unit for oil wells drilled by Lessee after the effective date of such modification or amendment of the applicable field rules shall contain no more than 40 acres, plus a tolerance of ten percent);

[b] A tract of land designated in writing by Lessee as provided in this Lease containing no more than 320 acres on which Lessee has drilled a gas well pursuant to the terms of this Lease and which is producing in paying quantities.

(ii) With respect to horizontal wells:

[a] As to horizontal wells, which are not drilled or produced pursuant to a pooled unit created under the terms of this Lease, a tract of land designated in writing by Lessee containing no more than the lesser of:

[I] Forty (40) acres plus the minimum additional acreage allowed for horizontal drain holes, as set forth in Rule 86 of the Texas Railroad Commission utilizing the Additional Acreage Assignment Table of Rule 86 for fields with a density rule of forty (40) acres or less, as set forth in Section 3.86, Chapter 3, Part 1, Title 16, of the Texas Administrative Code; or

[II] 320 acres.

[b] As to horizontal wells which are located within a valid pooled unit created under the terms of this Lease, the Producing Unit for purposes of this Lease shall be the portion of the leased premises comprising a part of such pooled unit.

A Producing Unit, whether for a vertical well or for a horizontal well, shall include only those depths and horizons from one hundred feet (100') above the top of the shallowest formation producing in the well for such Producing Unit down to one hundred feet (100') below the base of the deepest producing formation in such well.

G. "Surface Owner" shall mean the record owner of the fee interest in the surface estate of the tract of land described in Section 2 of this Lease.

H. "Disposition" shall mean when used in reference to Lessee's handling of production; the transaction, place and point in time whereby Lessee and its Affiliates finally and fully relinquish any beneficial ownership, rights or enjoyment of any substance produced under the terms of this Lease.

I. "Affiliate" or "affiliate" as used herein means and shall include each and every one of the following:

- (i) each individual, corporation, joint venture, trust, estate, partnership, limited liability company or other entity that owns or controls more than one percent (1%) of the outstanding voting securities or interest of Lessee; and
- (ii) each corporation, joint venture, trust, partnership, limited liability company or other entity in which Lessee or any current or past officer or director of Lessee owns or controls more than one percent (1%) of the outstanding voting

securities or interest.

2. Grant of Interest/Description.

A. Lessor, in consideration of a cash bonus in hand paid, of the royalties herein provided, and of the agreements of Lessee hereinafter contained, hereby grants, leases, and lets unto Lessee for the sole purpose of exploring for, drilling, operating, and producing oil and/or gas and of laying pipelines, temporarily storing oil, building one or more tank batteries, power lines, and roads thereon necessary to produce, save, care for, treat and transport the oil and/or gas produced from the land leased hereunder, the following described land situated in Upton County, Texas, (sometimes referred to hereinafter as the "leased premises") to wit:

Tract A: NE/4 of Section 38, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract B: All depths from the surface down to a depth of 7100 feet below the surface and all depths lying below a depth of 8500 feet below the surface in the NW/4 and the S/2 of Section 38, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract C: All depths lying below a depth of 9000 feet below the surface in Section 48, Block 39, T-5-S, T&P Ry. Co. Survey.

B. This Lease is made subject to any and all easements, rights of way and other encumbrances burdening any part of the leased premises as shown of record in Upton County, Texas or apparent from a reasonable inspection of the leased premises.

C. By this Lease, Lessee acquires no right to construct, operate or maintain any treating or processing plant, dwelling house, lease house, camp, pipe yard, equipment yard, warehouse or similar structure on the leased premises and acquires no easement, express or implied, with respect to any land other than the leased premises.

D. Lessee specifically covenants and agrees that with respect to its performance of obligations (both express and implied) and exercise of rights and privileges arising under this Lease that Lessee shall conduct itself with respect to Lessor and the Surface Owners with the utmost good faith and fair dealing. Lessee further covenants and agrees to comply with all applicable local, state and federal laws, rules, and regulations.

3. **Term.** Subject to the provisions contained herein, this Lease shall be for a term of three (3) years from this date (called "primary term"), and for so long thereafter as oil and gas, or either of them, is produced in paying quantities from the leased premises.

4. **Surface Use Agreement.** Lessee's rights to utilize the surface estate in the leased premises as elsewhere described in this Oil and Gas Lease are expressly made subject to that certain Surface Use Agreement dated April 4, 2012, entered into by and between Eleanor C. Hartman, as Trustee of the W. N. Connell and Marjorie T. Connell Living Trust under Trust Agreement dated May 18, 1972, as Owner, and Apache Corporation, as Operator. It is understood and agreed that the execution and delivery of this Oil and Gas Lease is made conditional upon the execution and delivery of the Surface Use Agreement.

5. **Reservations.** There is EXCEPTED from this Lease and Lessor RESERVES unto Lessor and Lessor's heirs, successors, administrators and assigns:

A. all minerals except oil, gas and other liquid and gaseous substances and sulphur that are necessarily produced with such oil or gas;

B. equal and concurrent rights of occupancy, use and possession of the surface estate by

(1) Lessor, (2) the Surface Owner and (3) Lessor's or the Surface Owner's other mineral, surface, grazing, agricultural and recreational lessees or assignees, together with the right of ingress to and egress from the leased premises for all purposes including exploring, developing and operating said leased premises for oil, gas and other minerals of whatever nature which are not covered by this Lease or which may hereafter be released from this Lease and, the sole and exclusive right, as between Lessor and Lessee, to complete water source wells on the leased premises and in any reservoir not productive of oil or gas for the purpose of obtaining water for domestic and agricultural use and consumption and for the exploration, development and operation of Lessor's reserved rights; provided, however, Lessor and Surface Owner agree not to use the surface of the premises affected hereby in any manner that will interfere unduly with any of Lessee's rights in exploring, developing, producing, transporting, and marketing oil, gas and other hydrocarbons under leased premises. As between mineral, surface, and agricultural lessees, access to the surface shall be based on the principle of first-in-time, first-in-right, but as between Lessee herein and subsequent mineral lessees, the leasehold estate created by this Lease shall be considered dominant;

C. all rights granted to Lessee in this Lease shall be limited to the leased premises and depths described and covered by this Lease together with such ingress to and egress from leased premises as designated by Lessor and shall not extend to and Lessor expressly reserves all rights, privileges and usage which relate to land not described herein or which may be released herefrom. It is understood and agreed that to the extent Lessee establishes roads, flowlines, pipelines or power lines across the leased premises in accordance with the terms and provisions of the Surface Use Agreement to service its operations on any of the following described tracts of land (the "Jointly Operated Acreage"), prior to any partial or total termination of this Lease, then and in that event, Lessee may nevertheless continue to use such established roads, flowlines, pipelines and power lines as originally configured for as long as any of the existing oil and gas leases (including this Lease and any oil and gas leases executed by Lessor to Lessee within (30) days from and after the date of this Lease) covering any portion of the Jointly Operated Acreage remains in force and effect; provided however it is expressly understood and agreed that Lessee's limited right to use the surface estate of the leased premises for roads, flowlines, pipelines and power lines across the leased premises for the benefit of Lessee's other leasehold operations on the Jointly Operated Acreage shall never be extended or construed to extend or be utilized by Lessee for the use or benefit of or as a convenience to Lessee in operating on lands not within the Jointly Operated Acreage, regardless of whether such lands not included within the Jointly Operated Acreage are owned by Lessor or any one or more of the Surface Owner or third parties:

(i) Section 38, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

(ii) Section 48, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

6. Partial Termination; Continuous Development; Retained Acreage and Depths.

A. At the later to occur of the following: (i) the expiration of the primary term of this Lease, or (ii) the conclusion of the Lessee's continuous development program undertaken and prosecuted in accordance with the provisions of this Lease; this Lease shall terminate as to all of the leased premises not theretofore released, save and except the acreage and depths included in the Producing Unit(s) established by Lessee.

B. Each Producing Unit shall be in the form of a square or rectangle as nearly as is practicable with the well at a legal location on such Producing Unit and as nearly as possible in the center of such Producing Unit.

C. Lessee shall designate each Producing Unit in recordable form with such designation containing a metes and bounds description or other sufficient legal description of the Producing Unit's exterior boundaries and relevant depth limitations. Lessee shall place each designation of a Producing Unit of record in Upton County, Texas within sixty (60) days after the completion of the well for such Producing Unit and promptly provide to Lessor a certified copy of such recorded designation of Producing Unit; provided, however that during the existence (if any) of Lessee's continuous development program, Lessee may defer filing such designations until the continuous development program has been concluded at which time Lessee may file a single instrument which

identifies and designates each Producing Unit situated on the leased premises.

D. Lessee shall, within sixty (60) days after termination of this Lease, as to any part of the leased premises, execute and furnish to Lessor a recordable release describing the acreage and/or depths as to which this Lease has terminated.

E. Subject to the provisions of Section 6.G. below, if at the expiration of the primary term of this Lease, Lessee is then engaged in drilling a well on the leased premises or if Lessee has completed a well as a commercial producer on the leased premises and such well is then still producing in paying quantities upon the expiration of the primary term of this Lease, Lessee shall have the right and option (but not obligation) to engage in a continuous development program on the leased premises by conducting a program of continuous drilling of new wells on the leased premises allowing no more than one hundred eighty (180) days to elapse between (i) the completion of one well as a well producing in paying quantities or as a dry hole, and (ii) the commencement of actual drilling operations on the next succeeding well. If a continuous development program is undertaken by the Lessee it shall be deemed to have been concluded on the earlier to occur of the following: (x) at such time as Lessee allows more than one hundred eighty (180) days to pass from the most recent completion of a new well on the leased premises without having commenced actual drilling operations on another new well; or (y) upon the date which is the tenth (10th) anniversary of the date on which the primary term of this Lease expired. It is understood and agreed that commencement of reworking operations or drilling, side tracking or deepening operations on a well previously completed pursuant to this Lease shall not constitute "commencement of actual drilling on the next succeeding well" so as to constitute continuous development.

F. If after the expiration of the primary term of this Lease or the conclusion of Lessee's continuous development program, whichever occurs later, any Producing Unit shall cease to produce in paying quantities this Lease shall terminate as to such Producing Unit unless Lessee, within sixty (60) days after such cessation of production in paying quantities, commences reworking operations or commences actual drilling operations and thereafter diligently prosecutes the same or different reworking or actual drilling operations on such Producing Unit with no cessation of more than thirty (30) days until production in paying quantities is restored.

G. Notwithstanding anything herein to the contrary, on the date which is the tenth (10th) anniversary of the date on which the primary term of this Lease expires, this Lease shall terminate as to all acreage not then located within a Producing Unit.

H. Although this Lease may have terminated in part or may have been partially released, Lessee shall have and retain easements over and across the terminated portion or portions of the surface of the leased premises as shall be reasonably necessary for ingress and egress so as to enable Lessee to develop and operate the portion or portions of the leased premises as to which this Lease continues in effect and Lessee shall not be required to relocate any pipelines or roads solely because of the partial termination or partial release of this Lease.

7. Royalties. As royalty, Lessee covenants and agrees:

A. Oil. To deliver free of cost to Lessor at the location of the disposition of Lessee's oil and liquid hydrocarbons or to the credit of Lessor at the pipelines to which the wells may be connected, one-fourth (1/4) of all oil and other liquid hydrocarbons (recovered or separated on the leased premises) produced and saved from the leased premises; or, at the Lessor's option, which may be exercised from time to time, Lessee shall pay to Lessor the same percentage of the market value at the point of Lessee's disposition of its oil and liquid hydrocarbons for such oil and other liquid hydrocarbons of like grade and gravity prevailing in the area on the day such oil and other hydrocarbons are run; provided, however, there shall be no deduction from the value of Lessor's royalty by reason of any processing, treatment, trucking, transportation or other cost to market such oil and other liquid hydrocarbons. If Lessee or any Affiliate of Lessee engages in any "downstream marketing" of oil or other liquid hydrocarbons, from the leased premises, including receiving payments for aggregating such substances with oil or liquid hydrocarbons produced from other tracts of land, then and in that event, Lessee shall fully disclose any such contractual or other marketing arrangements and shall include in its payment of royalties on oil the share of the payments or value

of any other consideration received in connection with or for such arrangements on the basis that the production from and attributable to this lease bears to the total volume of production the disposition for which Lessee or any of its Affiliates received any "bonuses", "marketing fees", "aggregation fees" or the like.

B. Gas. To pay the Lessor:

(i) On gas produced from the leased premises which is processed in a processing plant in which Lessee or any parent, subsidiary or affiliate of Lessee has a direct or indirect interest, Lessor shall receive the higher of (a) one-fourth (1/4) of the market value of such gas at the inlet to the processing plant, or (b) one-fourth (1/4) of the market value of all processed liquids saved from said gas at the point of disposition for Lessee's share of processed liquids, plus one-fourth (1/4) of the market value of all residue gas at the point of sale, use or other disposition.

(ii) On gas produced from the leased premises, which is processed in facilities other than a processing plant in which Lessee or any parent, subsidiary or affiliate of Lessee has a direct or indirect interest, Lessor shall receive one-fourth (1/4) of the market value at the point of disposition of Lessee's liquids of all processed liquids credited to the account of Lessee and attributable to such gas, plus one-fourth (1/4) of the market value of all residue gas at the point of sale, use or other disposition.

(iii) On all gas produced from the leased premises, and sold by Lessee or used on or off the leased premises, and to which the preceding subparagraphs (i) and (ii) above do not apply, Lessor shall receive one-fourth (1/4) of the market value at the point of use or other disposition of all such gas.

C. The market value of all gas shall be determined at the specified location and by reference to the gross heating value (measured in British thermal units) and quality of the gas. The market value used in the calculation of all royalty under this Lease shall never be less than the total proceeds received by Lessee in connection with the sale, use or other disposition of oil or gas produced or sold from the leased premises. If Lessee receives from a purchaser of oil or gas any reimbursement for all or any part of severance or production taxes, the proportionate part of such reimbursement amount shall be added to the total proceeds received by Lessee for purposes of this subsection. If Lessee realizes proceeds of production after deduction of any expenses of production, gathering, dehydration, separation, compression, transportation, treatment, processing, storage or marketing, then the proportionate part of such deductions shall be added to the total proceeds received by Lessee for purposes of this Section 7.C.

D. Notwithstanding anything to the contrary, Lessor's royalty shall never bear, either directly or indirectly, any part of the costs or expenses of production, separation, gathering, dehydration, compression, transportation, trucking, processing, treatment, storage or marketing of the oil or gas produced from the leased premises, nor any part of the costs of construction, operation or depreciation of any plant or other facilities or equipment used in the handling of oil or gas produced from the leased premises. Royalty shall be payable on oil, gas and other products produced from the leased premises and consumed by Lessee on the leased premises, whether for compression, dehydration, fuel or other uses. It is understood and agreed that as to gas volumes produced from the leased premises which are reinjected by Lessee into a producing formation in the leased premises for the purpose of pressure maintenance or re-pressuring such formation with Lessee having the good faith belief that such re-injection will result in the enhancement of the overall recovery of royalty-bearing hydrocarbons from this Lease, then and in that event Lessee shall not be required to pay royalties on such re-injected gas volumes.

E. If the gas produced from the leased premises is sold by Lessee pursuant to an arms-length contract with a purchaser which is not an affiliate of Lessee, and the contract provides for (i) net proceeds to be paid to Lessee which equal or exceed the market value of the gas at the point of delivery to such purchaser at the time such contract is entered into, and (ii) a term no longer than that which is usual and customary in the industry at the time the contract is made and such contract provides for redetermination of price to reflect increases in the market value of natural gas not less frequently than annually, then the market value of the gas sold pursuant to such contract shall be the

total proceeds received by Lessee in such sale, subject to the provisions of Section 7.C. and 7.D. above.

8. **Payment of Royalties.** With respect to each well on the leased premises, initial royalty payments for oil and/or gas shall be made on or before the end of the fourth (4th) calendar month following the month of first production. Thereafter, all royalties which are required to be paid hereunder to Lessor shall be due and payable in the following manner: Royalty on oil shall be due and payable on or before the fifth (5th) day of the second (2nd) calendar month following the month production is sold, and royalty on gas shall be due and payable on or before the fifteenth (15th) of the third (3rd) calendar month following the month of production. Each royalty payment shall be accompanied by a check stub, schedule, summary or remittance advice identifying the Lease and showing the gross amount and disposition of all oil and gas produced and the market value of the oil and gas. A copy of all contracts under which gas is sold or processed and all subsequent agreements and amendments to such contracts shall be delivered to Lessor within thirty (30) days after entering into or making such contracts, agreements or amendments. The books, accounts and all other records pertaining to production, transportation, sale and marketing of oil or gas from the leased premises shall at any time during normal business hours be subject to inspection and examination by Lessor. If payments to be made by Lessee to Lessor are not made when due for whatever reason, the unpaid portion shall bear interest at the lower of Twelve Percent per annum (12%) or the highest rate allowed by law. If Lessee is in default hereunder and this matter is turned over to an attorney for collection, or is collected by suit, Lessee agrees to pay all reasonable attorney's fees and litigation expenses incurred by Lessor. Payments may be remitted to Lessor annually for the aggregate of up to twelve (12) months' accumulation of proceeds if the total amount owed is \$25.00 or less.

9. **Limitation of Oil and Gas.** This Lease is intended to cover only oil and gas, but some other substances (including helium and sulphur) may be produced necessarily with and incidental to the production of oil or gas from the leased premises; and, in such event, this Lease shall also cover all such other substances so produced. On all such substances produced under and by virtue of the terms of this Lease, Lessor shall receive a royalty of one-fourth (1/4) of all such substances so produced and saved, same to be delivered to Lessor, free of all costs; or, at Lessor's election, Lessor's one-fourth (1/4) of such substances shall be sold by Lessee with Lessee's portion of such substances and at the same price realized by Lessee in its disposition of its portion of such substances.

10. **Gas Contracts: Contracts for Sale or Other Disposition of Production.**

A. Each and every contract or agreement entered into by Lessee for or relating to the sale, processing or other disposition of production from or attributable to this Lease shall contain provisions sufficient to accommodate the Lessor's full exercise of its rights and privileges with respect to its royalty share of production including, but not limited to, those set forth in Section 12 of this Lease.

B. In the event Lessee enters into a contract for the sale of gas produced from or attributable to this Lease (including the Lessor's royalty share of gas) which contract contains what is commonly referred to as a "take or pay provision" (such provision meaning that the gas purchaser agrees to take delivery of a specified minimum volume or quantity of gas over a specified term at a specified price or to make minimum periodic payments to the producer for gas not taken by purchaser) and the purchaser under such gas purchase contract makes payments to Lessee by virtue of such purchaser's failure to take delivery of such minimum volume or quantity of gas, then Lessor shall be entitled to one-fourth (1/4) of all sums paid to producer under the provisions of such contract. Such royalty payments shall be due and owing to Lessor within sixty (60) days after Lessee's receipt of such payments from its purchaser. Any royalty payments made to Lessor under the "pay" obligation of any "take or pay" gas contract shall be applied as a credit toward Lessee's minimum royalty obligation. If the gas purchaser which has made any such "take or pay" payments to Lessee is entitled to and does "make-up" volumes of gas within the recoupment period called for in the gas contract and Lessee is required to give such purchaser a credit for those volumes of gas previously paid for but not taken, then Lessor shall not be entitled to royalty on such "make-up" gas, except to the extent necessary for Lessor to receive its full royalty share of the market value of such gas in accordance with Section 7.

C. To the extent Lessor's royalty share of oil, gas, natural gas liquids or any other substance produced and saved from the leased premises is covered or included by Lessee in any contract for the sale, processing or other disposition of production from or attributable to this Lease, Lessor shall be an intended third-party beneficiary of any such contract regardless of any provision of such contract(s) to the contrary. Further, Lessor shall be entitled to one-fourth (1/4) of the value of any benefits obtained by or granted to Lessee in connection with the Lessee's execution, amendment, modification, extension, cancellation, waiver, or settlement of any such contract.

11. **Separation of Liquids.** All gas produced from the leased premises shall, before the same is sold or used for any purpose or is transported from the leased premises be passed through a mechanical separator system situated on the leased premises designed and operated to effect the maximum economical recovery of liquid hydrocarbons therefrom. All condensate, distillate, natural gasoline, kerosene and all other liquid hydrocarbons and mixtures thereof produced with gas from the leased premises and separated from such shall be considered oil for all purposes of Section 7.A. above.

12. **Right to Take Production in Kind.** Lessor shall always have the right, at any time and from time to time, upon reasonable written notice to Lessee, to take Lessor's share of oil, gas and processed liquids in kind. Lessor may elect to take Lessor's gas in kind at the well, or at the point of delivery where Lessee delivers Lessee's gas to any third party. If gas is processed, Lessor may elect to take Lessor's share of residue gas attributable to production from the leased premises, at the same point of delivery where Lessee receives its share of residue gas or has its share of residue gas delivered to a third party. Lessor may elect to have its royalty share of processed liquids stored in tanks at the plant or delivered into pipelines on the same basis as Lessee's share of liquids is stored or delivered. Lessor shall reimburse Lessee for all reasonable costs incurred by Lessee in operating or maintaining additional facilities necessary for Lessor's royalty gas and processed liquids to be separately metered, accounted for, and delivered to a third party, but Lessor shall not be charged for any expense in the production, gathering, dehydration, separation, compression, transportation, treatment, processing or storage of Lessor's share of gas and processed liquids along with Lessee's share of gas and processed liquids.

13. **Shut-in Gas Well Payments.** If after the expiration of the primary term there is a gas well on the leased premises capable of producing in paying quantities but the production thereof is shut-in, shut-down or suspended for lack of a market, available pipelines, or because of government restrictions or, if it is economically inadvisable for both the Lessor and Lessee to sell gas for a time as evidenced by a written agreement signed by both parties, then, and in any such event, Lessee may pay as shut-in royalty on or before sixty (60) days after the date on which (a) production from any such well is shut-in, shut-down or suspended; or (b) this Lease is no longer maintained by compliance with one of the other preservation provisions hereof, whichever is the later date and thereafter at annual intervals the sum of Twenty Five Dollars (\$25.00) per net mineral acre per Producing Unit per well, or Five Hundred Dollars (\$500.00) per well which ever is greater, for each and every shut-in, shut-down or suspended well. If such payment is made in accordance with the terms hereof, this Lease shall not terminate, but shall continue in force for a period of one (1) year from the date of making such shut-in payment (subject to the exceptions set out hereafter) and it will be considered that gas is being produced from the leased premises in paying quantities within the meaning of each pertinent provision of this Lease. Provided, however, in no event shall shut-in well payments maintain this Lease in force for any single period exceeding two (2) years nor shall Lessee be entitled to utilize shut-in gas well payments to maintain any part of this Lease if this Lease has theretofore been maintained in whole or in part by the payment of shut-in gas well payments for a cumulative length of time exceeding four (4) years. Any shut-in royalty payment shall not be a credit against production nor be credited with prior production royalty. In the event that production is begun or resumed during the year following the payment of a shut-in royalty payment and is subsequently shut-in, during such year the second annual shut-in payment shall be due and payable on the anniversary date of the first payment. If there is production on such first anniversary date and the well is subsequently shut-in, shut-down or suspended, then the second shut-in payment shall be made on or before sixty (60) days after such new shut-in date or the Lease shall terminate. Notwithstanding anything to the contrary set out above, a proper shut-in gas well payment will maintain the rights granted by this Lease only to the Producing Unit(s) of such gas well(s) as if they were producing gas in paying quantities pursuant to Section 2 above. Should such shut-in gas well payments not be made

in a timely manner as provided for above, then, in that event, it shall be considered for all purposes that there is no production of gas from any such well or wells and, unless this Lease is being maintained by another preservation provision hereof, this Lease shall terminate automatically at midnight on the last day provided for the payment of such shut-in royalties, and Lessee shall thereupon furnish to Lessor a release of all of its interest in and to the Producing Units containing a shut-in gas well.

14. Pooling.

Vertical Wells. Unless Lessee obtains the prior written consent of Lessor, Lessee shall have no authority under this Lease to pool all or any portion of the leased premises with other acreage, tracts, interests or leases for the purposes of drilling or producing from a vertical well.

Horizontal Wells. Lessee, at its option, is granted the right and power to pool or combine Lessor's interest in the leased premises, or any portion thereof, as to oil and gas, or either of them, with other contiguous land, lease or leases, to form a pooled unit for a horizontal well, when in Lessee's judgment it is necessary or advisable to do so in order to properly explore, develop and operate the leased premises in compliance with the spacing and density rules of the Railroad Commission of Texas, or other lawful authority, or when to do so would, in the judgment of Lessee, promote the conservation of the oil and/or gas in and under and that may be produced from the portion of the leased premises to be included in such a pooled unit for a horizontal well.

A pooled unit created for a horizontal well under this Lease may contain no more than the lesser of:

- (a) Forty (40) acres plus the minimum additional acreage allowed for horizontal drain holes, as set forth in Rule 86 of the Texas Railroad Commission utilizing the Additional Acreage Assignment Table of Rule 86 for fields with a density rule of forty (40) acres or less, as set forth in Section 3.86, Chapter 3, Part 1, Title 16, of the Texas Administrative Code; or
- (b) 320 acres.

Lessee shall execute in writing an instrument identifying and describing the pooled acreage, the leases and interests so pooled, the zones, substances, formations and depths covered by the pooled unit and record such instrument in the county or counties in which the pooled land is situated. The pooled unit shall be effective on the date such instrument is filed of record. A copy of such recorded instrument, and all amendments thereof, shall be furnished to Lessor within thirty (30) days from and after the respective effective date of such instrument(s).

Production from or drilling or reworking operations on any horizontal well on such pooled unit shall be treated as production from or drilling or reworking operations on the portion of the leased premises included in such pooled unit, provided, however, notwithstanding anything else in this Lease to the contrary, production from or drilling or reworking operations on any pooled unit established hereunder shall not be treated as or constitute production from, or drilling or reworking operations on any portion of the leased premises not included within such pooled unit. This Lease may be continued in force and effect as to portions of the leased premises not included in a pooled unit only as provided elsewhere in this Oil and Gas Lease.

Unless otherwise stated herein, there shall be allocated to this Oil and Gas Lease the proportion of the total production from the pooled unit that the number of surface acres covered by this Oil and Gas Lease and included in the pooled unit bears to the total number of surface acres in such pooled unit; and royalties shall be paid hereunder only upon that portion of total pooled unit production so allocated.

Any pooled unit designated by Lessee in accordance with the provisions of this Lease shall automatically terminate upon the completion of a dry hole on the pooled unit or upon the cessation of production in commercial quantities from said pooled unit unless Lessee commences additional operations or restores production on the pooled unit within the applicable time period required for

operations provided in Section 6.F. of this Lease. Lessee may dissolve a pooled unit designated in accordance with this Lease at any time after the completion of a dry hole or cessation of production in commercial quantities from such pooled unit.

15. **Assignability.** The rights of either party hereunder may be assigned in whole or in part and the provisions hereof extend to the heirs, executors, administrators, successors and assigns of the parties hereto; provided, however, that any such assignment by Lessee shall require the prior written consent of Lessor, provided further, however that such consent shall not be unreasonably withheld. Lessor's consent to any assignment shall not constitute consent to any other assignment. Lessee shall furnish Lessor a copy of any assignment made pursuant to this section, with the recording data reflected thereon (if recorded). Assignment of this Lease or any part thereof shall not relieve Lessee, its assignees, or any subassignees of any obligations hereunder, theretofore accrued or to accrue in the future; and any assignee of Lessee shall, by acceptance of such assignment, be bound by all terms and provisions hereof. The term "assignment" as used herein, shall include, without limitation, any sublease, farmout, or any other agreement by which any share of the operating rights granted by this Lease are assigned or conveyed, or agreed to be assigned or conveyed, to any other party.

No change or division in ownership of the leased premises, rentals or royalties however accomplished shall operate to enlarge the obligations or diminish the rights of Lessee, nor shall any such change or division be binding upon Lessee for any purpose until the person acquiring any interest has furnished Lessee with a true and correct copy of the instrument or instruments constituting his chain of title from Lessor.

16. **Duty to Develop.** The drilling of a well or wells within the broad language of this Lease shall not be construed as an agreement or construction on the part of Lessor that such drilling would constitute reasonable development of the leased premises, or such portion or portions thereof as may be in force from time to time, as may be necessary to reasonably explore and develop the same for the production of oil and gas. In the event a well or wells producing oil or gas should be brought in on adjacent land and draining the leased premises, Lessee agrees to drill such offset wells as a reasonable prudent operator would drill under the same or similar circumstances. If oil and/or gas are discovered on the land covered by this Lease, Lessee agrees to further develop said land covered by this Lease as a reasonable prudent operator would under the same or similar circumstances.

17. **Surface Damages and Restoration.** Lessee's obligations with respect to its use of the surface estate in the leased premises is governed by that certain Surface Use Agreement between Lessee and the Surface Owner of even date herewith which is incorporated herein by reference for all purposes.

18. **Water.** Lessee's rights and interests to utilize potable ground water from the acreage covered by this Lease shall be restricted to those rights and interests more fully described in the Surface Use Agreement; otherwise by this Lease, Lessee does not (expressly or by implication or by operation of law) acquire any title to or right to use for any purpose, any water located in, on or under the leased premises.

19. **Division Orders.** Division orders or transfer orders, if executed, shall be solely for the convenience of the parties for the purpose of confirming the extent of Lessor's interest in production of oil and gas from the leased premises. No term or provision of this Lease shall be altered, amended, extended or ratified by any division order or transfer order. Any amendment, alteration, extension or ratification of this Lease or of any term or provision of this Lease shall be made by an instrument in writing clearly denominated as to its purpose and effect, describing the specific terms or provisions of the Lease affected and the proposed change or modification, and executed by the party against whom the amendment, alteration, extension, or ratification is to be enforced, any amendment, alteration, extension or ratification not so drafted and executed shall be of no force or effect.

20. **Information Requirements.**

A. Lessee shall furnish to the designated representative of Lessor (such representative initially designated to be Jacqueline Montoya of Las Vegas, Nevada, at or within the times indicated, a true and correct copy of each of the following:

(i) Any contract under which gas is sold or processed and any amendment to contract, within thirty (30) days after entering into the contract or amendment.

(ii) Each week, the daily drilling reports covering each well being drilled on the leased premises during the preceding week.

(iii) Simultaneously with its filing, any document affecting the leased premises and which is filed by Lessee with the Texas Railroad Commission or any other regulatory agency.

(iv) As soon as completed, final prints of all driller's logs, electrical logs and surveys obtained in drilling any well on the leased premises, any core analysis and test results obtained from any well on the leased premises, and Lessee's interpretation of all data obtained in Lessee's exploration operations on the leased premises.

(v) As soon as obtained by or on behalf of or made available to Lessee, any title opinion covering all or any part of the leased premises and obtained by or on behalf of or made available to Lessee while this Lease is in effect.

(vi) As soon as entered into, any permitted farm out agreement which is not filed for record.

(vii) With each royalty payment, a check stub, schedule, summary or other remittance advice showing the production period covered by the payment, gross production for the period, the amounts of any deductions and the amount of royalty being paid.

B. Lessee shall furnish to Lessor, as soon as the recording data is available for inclusion, a true and correct photocopy of this Lease, any release of this Lease in whole or in part, any permitted farm out agreement which is filed for record and any permitted assignment of this Lease in whole or in part. In each case where such instruments are to be recorded, the copy provided to Lessor shall reflect the recording data for such instrument.

C. Lessor, at Lessor's risk, shall have access to the derrick floor and all other areas at all times during any operations conducted by Lessee on the land. Lessee shall advise Lessor of the size of chokes installed on all producing wells on the leased premises at all times, together with appropriate pressure information to permit Lessor to check the rate of production from the wells. Lessor shall have the right to strap all storage tanks and read and check all meters and charts affixed to any producing well at reasonable times without previous notice to Lessee, and Lessor may, at Lessor's expense, install check meters on or otherwise check any producing well or wells located on the leased premises.

D. During Lessee's regular office hours, Lessor shall have access to and may inspect and copy all information concerning the drilling, coring, testing and completing of all wells, including the driller's log and all electrical logs and surveys, and all accounting books and records, production charts, records and information, concerning the production, transportation and marketing of oil and gas from the leased premises, and during and for five (5) years after expiration of the primary term of this Lease, all of the following data obtained as a result of Lessee's operations under this lease: all seismic, gravity meter and similar exploration data obtained by Lessee in its exploration of the leased premises so as to permit Lessor to make its own evaluation and interpretation of the data.

E. Lessee shall notify Lessor at least thirty (30) days in advance (exclusive of Saturdays, Sundays and legal holidays) of the time and date of the proposed plugging of any well which has produced, so as to allow Lessor to observe and inspect the plugging operations.

21. INDEMNIFICATION. LESSEE, ITS SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, DEFEND AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, LIABILITIES, FINES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES AND LITIGATION EXPENSES) (COLLECTIVELY "CLAIMS") RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH OPERATIONS OF OR FOR LESSEE, ITS AGENTS, CONTRACTORS, OR

SUBCONTRACTORS HEREUNDER, INCLUDING CLAIMS ARISING OUT OF LESSOR'S NEGLIGENCE PROVIDED HOWEVER, THAT THE LESSEE'S OBLIGATIONS UNDER THIS SECTION 21 SHALL NOT APPLY TO CLAIMS THAT ARISE SOLELY OUT OF LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS PROVISION AND ITS INDEMNITIES SHALL SURVIVE THE TERMINATION OF THIS LEASE AND SHALL INURE TO THE BENEFIT OF AND BE BINDING UPON THE RESPECTIVE SUCCESSORS, HEIRS AND ASSIGNS OF LESSOR AND LESSEE.

22. Special Warranty of Title. Lessor warrants title to the undivided fractional mineral fee interest it owns of record as of the date of this Lease and which is covered by this Lease subject to the reservations, exceptions and other provisions hereof, unto Lessee from and against the claims of persons claiming or to claim the same or any part thereof during the term of this Lease by, through and under Lessor, but not otherwise. Lessor agrees that Lessee, at its option after Lessee has given Lessor sixty (60) days' written notice, may discharge any tax, mortgage or other lien upon Lessor's interest in the lease premises, either in whole or in part, and in the event Lessee does so, it shall be subrogated to such lien with right to enforce same, subject to any defenses of Lessor, and apply royalties accruing hereunder toward satisfying same.

23. Proportionate Reduction for less than Entire Interest. It is agreed that if Lessor owns an interest in oil and gas in and under any of the leased premises which is less than the entire oil and gas fee simple estate, then the royalties on production shall each be reduced by the proportion thereof which the mineral fee estate of Lessor in such land bears to the entire mineral fee estate, provided that in no event shall there be any refund of any amounts previously paid to Lessor as bonus, or shut-in gas well payments.

24. COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS. LESSEE, ITS SUCCESSORS AND ASSIGNS, BY ITS ACCEPTANCE OF THIS LEASE, HEREBY AGREES TO COMPLY WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS AND HEREBY ASSUMES FULL RESPONSIBILITY FOR, AND AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS, LESSOR FROM AND AGAINST ANY LOSS, LIABILITY, CLAIM, FINE, EXPENSE AND COSTS (INCLUDING REASONABLE ATTORNEYS FEES AND LITIGATION EXPENSES) AND CAUSE OF ACTION (COLLECTIVELY "ENVIRONMENTAL CLAIMS") CAUSED BY OR ARISING OUT OF THE VIOLATION (OR DEFENSE OF THE ALLEGED VIOLATION) OF ANY FEDERAL, STATE OR LOCAL LAWS, RULES OR REGULATIONS APPLICABLE TO ANY WASTE MATERIAL, DRILLING MATTER OR FLUID OR ANY HAZARDOUS OR TOXIC SUBSTANCES RELEASED OR CAUSED TO BE RELEASED BY LESSEE OR LESSEE'S AGENTS, OR INDEPENDENT CONTRACTORS FROM THE LEASED PREMISES HEREUNDER INTO THE ATMOSPHERE OR INTO OR UPON THE LEASED PREMISES OR ANY WATER COURSE OR BODY OF WATER, INCLUDING GROUND WATER, INCLUDING ENVIRONMENTAL CLAIMS ARISING OUT OF LESSOR'S NEGLIGENCE; PROVIDED, HOWEVER, THAT LESSEE'S OBLIGATIONS UNDER THIS SECTION 24 DO NOT APPLY TO ENVIRONMENTAL CLAIMS THAT ARISE SOLELY OUT OF LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. ADDITIONALLY, UPON RECEIVING ANY NOTICE REGARDING ANY ENVIRONMENTAL, POLLUTION OR CONTAMINATION PROBLEM OR VIOLATION OF ANY LAW, RULE OR REGULATION, LESSEE WILL FORWARD A COPY TO LESSOR BY CERTIFIED MAIL. THIS PROVISION AND ITS INDEMNITIES SHALL SURVIVE THE TERMINATION OF THIS LEASE, AND SHALL INURE TO THE BENEFIT OF AND BE BINDING UPON THE RESPECTIVE SUCCESSORS, HEIRS AND ASSIGNS OF LESSOR AND LESSEE.

25. No Salt Water or Waste Injection Wells. Lessee shall not be permitted to dispose of salt water or produced wastes or wastes of any kind into any formation or strata on this Lease, provided however Lessee may inject salt water produced from the leased premises into a well located thereon that has been drilled by Lessee or an existing wellbore that Lessee has converted into a disposal well, provided that Lessor's written consent is first obtained (such consent not to be unreasonably withheld). If and when requested by Lessor, Lessee shall demonstrate to Lessor's reasonable satisfaction that any such disposal or injection well is in compliance with all relevant laws and regulations concerning protection of ground water resources.

26. **Timely Plugging and Abandonment of Wells.** Without prior written consent of the Lessor, Lessee shall not allow any well located on the leased premises to remain in a shut-in, temporarily abandoned or otherwise non-productive state for a period of more than twelve (12) months without beginning plugging and abandonment operations with respect to the well and restoring the location, and providing that these procedures must be completed within two (2) months of their initiation. The only exception to this shall be gas wells capable of production which are shut-in pursuant to the provisions above regarding shut-in gas well payments, and for which shut-in gas well payments are being made in accordance with those same provisions. The obligations of Lessee, (and the concomitant rights of the Lessor), under this provision concerning the proper plugging and abandonment of wells and restoration of the surface of the leased premises shall survive the termination of this Lease, and shall inure to the benefit of and be binding upon the respective successors, heirs and assigns of Lessor and Lessee.
27. **Alteration/Modification.** The terms of this Lease cannot be altered or amended except by a written instrument clearly demonstrating such purpose and effect, and executed by both parties to this Lease. The written instrument shall describe the specific terms or provisions being altered and the proposed modification or change thereto. Any notation or legend attached to a royalty check shall be null and void and without legal significance for the purpose of altering this Lease.
28. **Recording Memorandum.** It is understood and agreed that Lessee may, if it so chooses, file a Memorandum of this Lease in the real property records of Upton County, Texas, such Memorandum to describe the Leased Premises and identify the primary term and Lessor(s) and Lessee(s) who execute this Lease. Such a recording Memorandum will be executed and acknowledged by each of the parties hereto and shall disclose the existence of the continuous development program called for in this Lease.
29. **Counterparts.** This Lease may be executed in multiple counterparts each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.
30. **GOVERNING LAW; VENUE.** THIS LEASE SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS. THE VENUE FOR ANY ACTION TO ENFORCE OR CONSTRUE THE TERMS AND PROVISIONS OF THIS LEASE SHALL BE IN THE STATE COURTS OF UPTON COUNTY, TEXAS.
31. **Separate Tracts/No Communitization.** If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interest as between any such separate tracts is intended or shall be implied, or result from, the inclusion of such separate tracts within this Lease. As used in this paragraph, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to the parties or amounts, from that as to any other part of the leased premises. Lessor has included multiple tracts under this Lease for the convenience of Lessor and Lessee, with the express agreement and stipulation that this Lease is not a "community lease" and that no communitization of royalty interest shall occur and that each separate tract shall be, for purposes of calculating and paying of royalty interest, considered a separate lease.
32. **Lease Bonus for Excess Acreage.** In the event during the primary term of this Lease it is discovered by Lessor or Lessee that this Lease actually covers more net mineral acres in the leased premises than such parties believed to be covered by this Lease at the time of its execution and delivery, and Lessor provides reasonable documentary proof of the existence of such excess net mineral acreage, then and in that event Lessee agrees to pay to Lessor an additional lease bonus consideration equal to the sum arrived at by multiplying the number of excess net mineral acres times the agreed per acre lease bonus consideration paid at the time of the execution and delivery of this Lease.
33. **Notices.** Any notice permitted or required under the terms and provisions of this Lease shall be in writing signed by or on behalf of the party giving notice and properly addressed and delivered to the recipient party utilizing the following address and contact information. Each notice under this Lease shall be sent by certified mail, return receipt requested, by facsimile transmission (fax), or by commercial overnight courier. A notice sent by mail shall be deemed to have been received (if

properly addressed, with postage prepaid) no later than three (3) Business Days after it is postmarked, while notices sent by commercial overnight courier shall be deemed to have been delivered when actually received.

Notices to the Lessor(s) and Lessee(s) respectively, shall be addressed as follows:

If to Lessor:

Eleanor C. Hartman, Individually and as
Trustee of the W. N. Connell and
Marjorie T. Connell Living Trust
Agreement dated May 18, 1972
P.O. Box 710
Las Vegas, Nevada 89125-0710

If to Lessee:

Apache Corporation
303 Veterans Airpark Lane, Suite 3000
Midland, Texas 79705

IN WITNESS WHEREOF, this instrument is dated as of the date first written above.

LESSOR

By: Eleanor C. Hartman Individually and as
Eleanor C. Hartman, Individually and as
Trustee of the W. N. Connell and Marjorie
T. Connell Living Trust under Trust Trustee
Agreement dated May 18, 1972

LESSEE

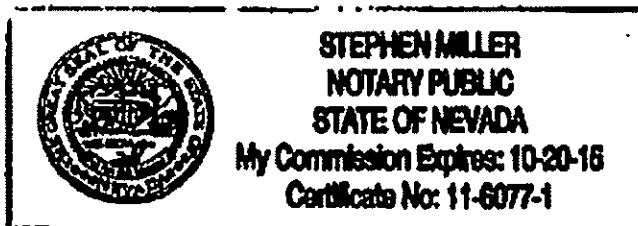
APACHE CORPORATION

By: Timothy R. Custer
Printed Name: TIMOTHY R. CUSTER
Title: ATTORNEY IN FACT

THE STATE OF NEVADA §
§
COUNTY OF CLARK §

The foregoing instrument was acknowledged before me this 4th day of April, 2012, by Eleanor C. Hartman, Individually and as Trustee of the W. N. Connell and Marjorie T. Connell Living Trust under Trust Agreement dated May 18, 1972.

[SEAL]

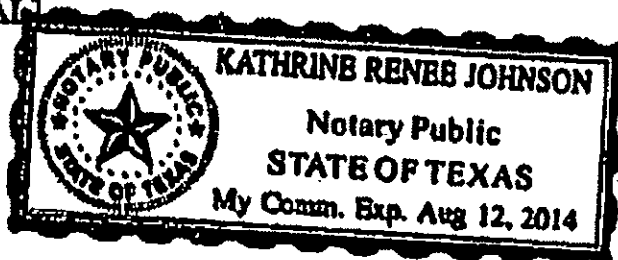


Stephen Miller
Notary Public in and for the State of Texas Nevada
Printed Name of Notary: Stephen Miller
My commission Expires: 10-20-15

THE STATE OF TEXAS §
COUNTY OF Midland §

The foregoing instrument was acknowledged before me this 11th day of April, 2012, by Timothy R. Custer Attorney in fact of Apache Corporation, a Delaware corporation, on behalf of said corporation.

[SEAL]



Kathrine Renee Johnson
Notary Public in and for the State of Texas
Printed Name of Notary: Kathrine Renee Johnson
My commission Expires: Aug 12, 2014

**ADDENDUM TO:
OIL AND GAS LEASE**

Replace addresses in paragraph 33 Notices on Page 14.

SIGNED 4-4-2012

Notices to Lessor and Lessee(s), respectfully, shall be addressed as follows:

If to Lessor:

Eleanor C. Hartman, Individually and as Trustee of the
W. N. Connell and Marjorie T. Connell
Living Trust under Trust Agreement dated May 18, 1972
8635 West Sahara Avenue, #549
The Lakes, Nevada 89117-5858

If to Lessee:

Apache Corporation 303 Veterans Airpark Lane, Suite 3000 Midland, Texas 79705

LESSEE

APACHE CORPORATION

BY: Timothy R. Custer

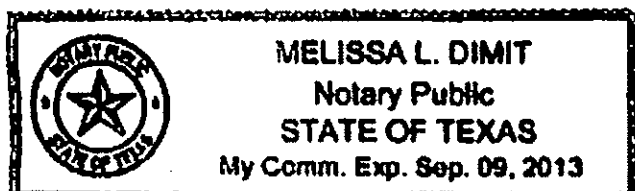
(mk) NAME: TIMOTHY R. CUSTER
Title: ATTORNEY IN FACT

State of TEXAS
County of MIDLAND

The foregoing instrument was acknowledged before me
this 10th day of July, 2012, by Timothy R. Custer, Attorney
In Fact of Apache Corporation, a Delaware corporation, on
behalf of said corporation.

Melissa L. Dimit

Notary Public in and for the State of Texas
Printed Name of Notary: Melissa L. Dimit
My commission expires: 9/9/2013



LESSOR

BY: Eleanor C. Hartman, Individually and as Trustee

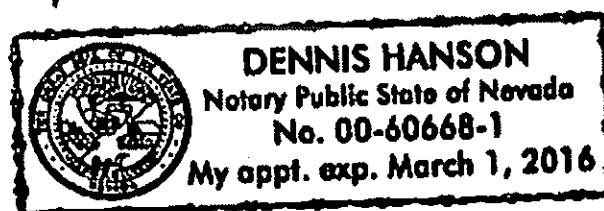
Eleanor C. Hartman, Individually and as Trustee of the
W. N. Connell and Marjorie T. Connell
Living Trust Agreement dated May 18, 1972
8635 West Sahara Avenue, #549
The Lakes, Nevada 89117-5858

NOTARY Nevada

State of Nevada
County of Clark

this Document was Acknowledged
before me this May 23rd 2012, by
Eleanor C. Hartman

Dennis Hanson
Notary Public



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EXHIBIT F
Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And
Reform Trust of Eleanor Ahern in the matter of the W. N. Connell And Marjorie T.
Connell Living Trust dated May 18, 1972 in the District Court of Clark County,
Nevada, Case No. P-09-066425-T



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P-09-066425-T

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AUG 17 12 21 PM '09 AUG 17 2009

[Signature]
CLERK OF THE COURT

[Signature]
CLERK OF THE COURT

1 PET

2 MARK A. SOLOMON, ESQ.

3 Nevada State Bar No. 00418

4 BRIAN K. STEADMAN, ESQ.

5 Nevada State Bar No. 10771

6 SOLOMON DWIGGINS & FREER, LTD.

7 9060 W. Cheyenne Avenue

8 Las Vegas, Nevada 89129

9 Telephone: 702.853.5483

10 Facsimile: 702.853.5485

11 Attorneys for ELEANOR C. AHERN, Petitioner

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 In the Matter of the

) Case No. P.09-066425-T

) PCI

15 THE W. N. CONNELL AND MARJORIE T.)

16 CONNELL LIVING TRUST,)

17 Dated May 18, 1972)

) Date of Hearing: September 4, 2009

18 An Intervivos Irrevocable Trust.)

) Time of Hearing: 9:30 a.m.

19 PETITION TO ASSUME JURISDICTION OVER TRUST; CONFIRM TRUSTEE;
20 AND CONSTRUE AND REFORM TRUST

21 Petitioner, ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN
22 ("Petitioner"), as successor Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING
23 TRUST, dated May 18, 1972 (the "Trust"), by and through counsel Mark A. Solomon, Esq., of the law
24 firm of SOLOMON DWIGGINS & FREER, LTD., hereby respectfully petitions this Court to assume
25 jurisdiction over the Trust, to confirm the Petitioner as Trustee of the Trust and any and all sub-trusts
26 created under the Trust, to construe the Trust, and for an order reforming the distributions to the
27 beneficiaries after the death of the Petitioner and the provisions appointing the successor Trustee.
28 Pursuant to Nevada Revised Statutes ("NRS") 153.031(b), (e), and (n), 155.140, 164.050, 164.010, and

1 164.015, Petitioner alleges as follows:

2 I.
3 PETITION TO ASSUME JURISDICTION OVER TRUST AND CONFIRM THE APPOINTMENT
4 OF PETITIONER AS TRUSTEE

5 1. W. N. CONNELL and MARJORIE T. CONNELL ("MARJORIE"), husband and wife, as
6 the grantors ("Grantors") and initial trustees, established the Trust on May 18, 1972, a copy of which is
7 attached to this Petition as Exhibit "1."

8 2. W. N. CONNELL died on November 24, 1979, and was survived by his wife, MARJORIE.
9 A copy of W. N. CONNELL's death certificate¹ is attached hereto as Exhibit "2."

10 3. The Petitioner is W. N. CONNELL's only surviving child. MARJORIE had no children
11 during her lifetime, but formally adopted the Petitioner.

12 4. Pursuant to Article Twelfth, upon W. N. CONNELL's death, MARJORIE was named as the
13 successor Trustee. See, Trust, Ex. 1, at pg. 13.

14 5. Pursuant to Section C of Article Second and Article Third, upon W. N. CONNELL's death,
15 the Trust was divided between Trust No. 2 and Trust No. 3. MARJORIE served as successor Trustee of
16 the Trust, including Trust No. 2 and Trust No. 3, until her death.

17 6. On May 6, 1980, the Petitioner was named as Co-Trustee of the Trust, as is indicated in the
18 Substitution of Trustee, attached hereto as Exhibit "3." The Petitioner served as Co-Trustee until the
19 death of MARJORIE.

20 7. MARJORIE died on May 1, 2009. A copy of MARJORIE's death certificate² is attached
21 hereto as Exhibit "4."

22 8. Pursuant to Article Twelfth, upon the death or incapacity of both W. N. CONNELL and
23

24
25
26
27 ¹ The social security number has been redacted.

28 ² The social security number has been redacted.

1 MARJORIE, the Petitioner is to serve as successor Trustee. See, Trust, Ex. 1, at pg. 13. The Petitioner
2 is currently serving as sole Trustee of the Trust, including Trust No. 2 and Trust No. 3.

3 9. The Petitioner is currently residing in Clark County, Nevada. The Trust is currently being
4 administered in Clark County, Nevada.

5 10. Section F of Article Eighth states as follows:

6 F. Applicable Law. This Trust Agreement is executed under the
7 laws of the State of Nevada and shall in all respects be governed by the laws of
8 the State of Nevada.

9 11. NRS 164.010(1) and (2) provides in pertinent part as follows:

10 1. Upon the petition of any person appointed as trustee of an express
11 trust by any instrument other than a will . . . the district court of the county in
12 which the trustee resides or conducts business, or in which the trust has been
13 domiciled, shall consider the application to confirm the appointment of the
14 trustee and specify the manner in which the trustee must qualify. Thereafter the
15 court has jurisdiction of the trust as a proceeding in rem.

16 2. If the court grants the petition, it may consider at the same time
17 any petition for instructions filed with the petition for confirmation.

18 12. It is appropriate for this Court to confirm Petitioner as Trustee since the Trust designates her
19 to serve as successor Trustee upon the death of both W. N. CONNELL and MARJORIE death.

20 13. Further, *in rem* jurisdiction over the Trust is proper since the Trust is domiciled and being
21 administered in Nevada.

22 14. Therefore, this Court should confirm the appointment of the Petitioner as Trustee of the Trust
23 and exercise *in rem* jurisdiction over the Trust.

24 II.

PETITION TO CONSTRUE AND REFORM TRUST

25 15. Pursuant to Section C of Article Second and Article Third, upon W. N. CONNELL's death,
26 MARJORIE, as the Trustee, allocated to Trust No. 3: (1) MARJORIE's separate interest in the trust
27 estate; (2) MARJORIE's one-half (½) interest in the community property of the trust estate; and (3) an
28

1 amount of property which qualified for the maximum marital deduction allowed for federal estate tax
2 purposes, reduced by the total of any other amounts allowed under the Internal Revenue Code ("IRC")
3 as federal estate tax credits. MARJORIE allocated to Trust No. 2 the balance of the Trust assets. *See*,
4 Trust, Ex. 1, at pgs. 2 and 3.

5
6 16. The division of the Trust into Trust No. 2 and Trust No. 3 is similar to a type of trust
7 commonly known as an "AB" trust, where upon the death of the first settlor, an amount equal to the
8 federal estate tax exemption is allocated to a credit shelter type trust with the remaining assets allocated
9 to a trust for the surviving spouse. In a standard AB trust, the assets allocated to the credit shelter trust
10 are for the benefit of the deceased spouse's beneficiaries while the remaining assets are for the benefit
11 of the surviving spouse.

12
13 17. Indeed, Trust No. 2 was drafted in such a manner as to benefit both the Petitioner and
14 MARJORIE, who would typically be W. N. CONNELL's beneficiaries. Additionally, Trust No. 3 was
15 for MARJORIE's benefit during her lifetime, and, more importantly, MARJORIE retained the
16 testamentary power to appoint the balance of Trust No. 3 to her estate or to any person or persons. *See*,
17 Trust, Ex. 1, at pg. 6.³

18
19 18. As of the death of MARJORIE, Trust No. 2 owned land and oil and gas shares in reserves
20 and income located in Upton County, Texas (the "Oil Assets"). The Oil Assets have not been valued for
21 some time, but are estimated to be worth approximately \$700,000.

22 19. Pursuant to Article Fourth, which Article governs the administration of Trust No. 2, all
23 income from the Oil Assets is to be paid to the Petitioner as the "Residual Beneficiary" during her
24

25 ³ MARJORIE exercised this power of appointment prior to her death as indicated in
26 Article Four of the Last Will and Testament of MARJORIE, dated January 7, 2008. A copy of
27 MARJORIE's Last Will and Testament is attached hereto as **Exhibit "5."** The beneficiary of the
28 exercise of the power of appointment was the MTC Living Trust, which contains provisions for the
benefit of the Petitioner's issue.

1 lifetime.⁴ Such income has been paid to the Petitioner since the creation of Trust No. 2 after W. N.
2 CONNELL's death.

3 20. Section B of Article Fourth, governing Trust No. 2, provides as follows:

4 B. Income. . . . In the event that the [Petitioner] predeceases
5 [MARJORIE], the [Petitioner's] right to receive income hereunder shall be paid
6 to or for the benefit of her living children and the issue of any deceased child by
7 right of representation; or in the event she dies without leaving issue, her income
rights hereunder shall become those of [MARJORIE].

8 See, Trust, Ex. 1, at pg. 4.

9 21. Although Trust No. 2 provides for a contingent distribution of the income from Trust No. 2
10 in the event that the Petitioner predeceased MARJORIE, no provision is made as to the final distribution
11 of Trust No. 2 after the death of the Petitioner, in the event that MARJORIE predeceased the Petitioner.

12 22. Upon assuming jurisdiction of a trust, this Court "has exclusive jurisdiction" over
13 proceedings to construe the terms of the trust and declare the rights of the parties, including "any
14 appropriate relief provided for with regards to a testamentary trust in NRS 153.031." See, NRS
15 164.015(1). NRS 153.031 provides, in pertinent part:

16 1. A trustee or beneficiary may petition the court regarding any
17 aspect of the affairs of the trust, including:

18 (b) Determining the construction of the trust instrument;

19 ***

20 (e) Ascertaining beneficiaries and determining to whom property is
21 to pass or be delivered upon final or partial termination of the trust, to the extent
22 not provided in the trust instrument;

23
24
25 ⁴ Section B of Article Fourth also states that all income received by Trust No. 2, other
26 than that received from the Oil Assets, is to be paid to MARJORIE. However, as the sole asset of
27 Trust No. 2 consists of the Oil Assets, this provision is inapplicable. Additionally, Trust No. 2
28 granted to MARJORIE the power to appoint and/or invade the principal of Trust No. 2 during her
lifetime. See, Trust, Ex. 1, at pg. 5. Petitioner is informed and believes that MARJORIE did not
exercise her power of appointment nor was the principal invaded for her benefit during her lifetime.

(n) Approving or directing the modification or termination of the trust[.]

23. A trust instrument may be reformed to conform with the settlor's intent, which may be ascertained from the trust instrument as a whole. *See, Sheinkopf v. Bornstein*, 823 N.E.2d 372 (Mass. 2005); *see also, Dassori v. Patterson*, 440 Mass. 1039, 802 N.E.2d 553 (2004) (A trust instrument may be reformed to conform with the settlor's intent.) The equitable power of the court to modify or reform a trust extends to situations where trust instrument contains some expression of trustor's intention, but drafting error renders that expression ambiguous. *See, Ike v. Doolittle*, 61 Cal. App. 4th 51, 70 Cal. Rptr. 2d 887 (4th Dist. 1998) (Recognizing the common law equitable power and the statutory authority of the court to alter administrative or distributive provisions of trust where necessary to accomplish purpose of trust).

24. On the application of the trustee or one or more beneficiaries, the court possesses and frequently exercises the power to modify the terms of the trust in order to effectuate the accomplishment of the purposes of the settlor. *See generally, Bogert on Trusts and Trustees*, §994; Restatement, Third, Trusts, §62. The court has equitable power to order reformation of a trust; and, once the court acquires jurisdiction, it is authorized to administer full, complete, and final relief. *See, Schroeder v. Gebhart*, 825 So. 2d 442 (Fla. Dist. Ct. App. 5th Dist. 2002), review denied, 845 So. 2d 892 (Fla. 2003).

25. If, due to a mistake, the trust does not contain the terms that were intended by the settlor, the settlor or other interested party may maintain a suit in equity to have the instrument reformed so that it will contain the terms that were actually agreed upon or that reflect the settlor's actual intent. *See, Restatement, Second, Trusts*, §333. *See also, Restatement, Third, Trusts*, §62.

26. The Petitioner is informed and believes that the failure to provide for distribution upon Petitioner's death is an omission due to scrivener error. Indeed, the Trust as a whole appears to be an

1 "AB" type trust whereby each spouse designates the beneficiaries they intend to receive such spouse's
2 share, but, in the case of the Trust, the final dispositive provisions of Trust No. 2 were omitted.

3 27. Indeed, Article Fourth of the Trust, governing Trust No. 2 makes adequate provision for
4 numerous other contingencies for the disposition of Trust No. 2, but appears to omit a provision for
5 alternate disposition in the current situation - where MARJORIE predeceased the Petitioner. See, Trust,
6 Ex. 1, at pgs. 4 and 5.

8 28. The Grantors' intent as to the final disposition of Trust No. 2 after the death of the Petitioner
9 can be derived from the contingent dispositions of Trust No. 2 and the dispositive terms of Trust No. 3.

10 29. Section B of Article Fourth, governing Trust No. 2, provides that the income from Trust No.
11 2 is to be distributed to the Petitioner's issue if the Petitioner predeceased MARJORIE. Additionally,
12 Trust No. 2 provides that, if the Petitioner predeceased MARJORIE leaving no issue, that MARJORIE
13 be entitled to the income from the Oil Asset. These provisions show the Grantors had an overall
14 dispositive model for Trust No. 2 in mind, which included not only the Petitioner, but the Petitioner's
15 issue.
16

17 30. As outlined in Section D of Article Fifth, governing Trust No. 3, adequate provisions are
18 made in for Trust No. 3 for the contingency of MARJORIE predeceasing the Petitioner, as follows:
19

20 D. Death of Survivor. Upon the death of the Survivor, the Trustee
21 shall distribute the trust estate in accordance with and to the extent provided by
the Survivor's exercise of his or her power of appointment.

22 If, and to the extent that the Survivor shall fail to effectively exercise the
23 foregoing power of appointment, the principal and undistributed income of Trust
24 No. 3 shall, upon his or her death, be distributed to the Residual Beneficiary, or
to the heirs of her body if she is not then living.

25 See, Trust, Ex. 1, at pg. 6.

26 31. Moreover, Section D of Article Fifth, governing Trust No. 3, provides that, upon the death
27 of both W. N. CONNELL and MARJORIE, the balance of Trust No. 3, if not otherwise appointed, is to
28

1 be distributed to the Petitioner or, if she is not living, then to her heirs. This provision clearly shows the
2 Grantors' overall intent that the assets be vested in remainder beneficiaries, in particular the Petitioner
3 and her heirs.

4 32. Bringing together the dispositive provisions of Trust No. 2 and Trust No. 3, the Grantors'
5 intentions can be derived as follows: that, upon the death of the Petitioner, the balance of Trust No. 2 is
6 to vest in the Petitioner's heirs.

7 33. Based on the terms of the Trust, the Petitioner requests that this Court: (1) construe the Trust
8 to provide that it is the intent of W. N. CONNELL and MARJORIE T. CONNELL, as Grantors, to
9 distribute the residue of Trust No. 2 to ELEANOR C. AHERN's heirs upon her death;⁵ and (2) reform
10 Trust No. 2 in accordance with such intention by adding new Sections "E," "F," "G," and "H" to Article
11 Fourth as follows:
12
13

14 *E. Distribution Upon Death of both the Survivor and the Residual*
15 *Beneficiary. Upon the death of both the Survivor and the Residual Beneficiary,*
16 *the Trustee shall divide the balance of Trust No. 2 into two equal shares, as*
17 *follows:*

18 1. One (1) equal share shall be distributed, outright and free of
19 trust, to the Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if
20 she is then living. Subject to Section (F) below, if, as of the date of the Residual
21 Beneficiary's death, JACQUELINE M. MONTOYA is not then living, then said
22 equal share shall be distributed to JACQUELINE M. MONTOYA's then living
23 issue, by right of representation. Each share created pursuant to this Section
24 E(1) of Article Fourth for the benefit of the issue of JACQUELINE M.
25 MONTOYA shall be held as a separate trust ("Beneficiary's Share") for the
26 benefit of such issue ("Beneficiary") to be held by the Trustee, administered and
27 further distributed pursuant to Section G of this Article Fourth.

28 2. One (1) equal share shall be distributed, outright and free of
trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is
then living. Subject to Section (F) below, if, as of the date of the Residual
Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal

⁵ The Petitioner's heirs as of the date of this Petition are her two (2) daughters,
JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER.

1 share shall be distributed to KATHRYN A. BOUVIER's then living issue, by
2 right of representation. Each share created pursuant to this Section E(2) of
3 Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be
4 held as a separate trust ("Beneficiary's Share") for the benefit of such issue
5 ("Beneficiary") to be held by the Trustee, administered and further distributed
6 pursuant to Section G of this Article Fourth.

7 3. In the event that both JACQUELINE M. MONTOYA and
8 KATHRYN A. BOUVIER predecease the Grantors, leaving no issue, and having
9 failed to exercise the testamentary power of appointment pursuant to Section (F)
10 below, then the balance shall be distributed in accordance with Article Eleventh
11 herein.

12 F. Power of Appointment. In the event that JACQUELINE M. MONTOYA
13 or KATHRYN A. BOUVIER predeceases the Residual Beneficiary, upon the
14 death of the Residual Beneficiary, the Trustee shall distribute such beneficiary's
15 equal share to or in trust for such one or more persons or organizations and in
16 such manner and proportions as such beneficiary may appoint by her will or
17 revocable trust making specific reference to this general power of appointment.

18 G. Management of Beneficiary's Shares. Until a Beneficiary has attained
19 the age of twenty-one (21) years, the Trustee may distribute to or apply for the
20 benefit of such Beneficiary so much of the income or principal from such
21 Beneficiary's Share as the Trustee determines, in the Trustee's sole discretion,
22 is necessary to provide for his or her health, education, maintenance, and
23 support. In addition, the Trustee may make the following discretionary
24 distributions:

25 1. Investment in Business. The Trustee may, in the Trustee's sole
26 discretion, apply the principal or income of such Beneficiary's Share for the
27 purpose of investing in a business or profession operated by, or to be operated
28 by, such Beneficiary and to be owned by the Beneficiary's Share.

2. Acquisition of Residences. The Trustee may, in the Trustee's sole
discretion, apply the income and principal of such Beneficiary's Share for the
purpose of purchasing one or more residences to be owned by the Beneficiary's
Share and used and occupied by such Beneficiary and his or her family,
including a primary residence, seasonal residence or otherwise. In the case of
any residence owned by the Beneficiary's Share, and in the Trustee's sole
discretion, such Beneficiary may occupy and use such residence without rent or
any other financial obligation for the payment of the taxes, insurance payments,
maintenance costs and other expenses required in order to keep such residences
in proper repair and free of liens.

3. Use of Tangible Trust Assets. The Trustee, in the Trustee's sole
discretion, may grant such Beneficiary the right to the use, possession and

1 enjoyment of all of the tangible personal property held by such Beneficiary's
2 Share, without financial obligation for the use of such property.

3 4. Distribution of Beneficiary's Share. Upon a Beneficiary attaining
4 the age of twenty-one (21), the Trustee shall distribute to him or her, outright
5 and free of trust, the remaining principal and accumulated income of that
6 Beneficiary's Share. If the Beneficiary has already reached the age of
7 twenty-one (21) at the time of the creation of the Beneficiary's Share, then the
8 Trustee shall, upon making the division, distribute, outright and free of trust, to
9 the Beneficiary the balance of such Beneficiary's Share.

10 5. Distribution Upon Death of Beneficiary. If any Beneficiary shall
11 die prior to the complete distribution of such Beneficiary's Share, then all of the
12 remaining assets in such Beneficiary's Share shall be distributed to or in trust
13 for such one or more persons or organizations and in such manner and
14 proportions as such Beneficiary may appoint by his or her will or revocable
15 trust making specific reference to this general power of appointment. To the
16 extent that the Beneficiary does not exercise this general power of appointment,
17 the remainder of such Beneficiary's Share shall be distributed to the issue of
18 such Beneficiary in equal shares by right of representation and each such share
19 shall be held, managed and further distributed by the Trustee as a Beneficiary's
20 Share under Section G of Article Fourth. If the Beneficiary shall die failing to
21 exercise this general power of appointment without leaving issue, then the
22 Beneficiary's Share shall be distributed pro rata to the other Beneficiary's
23 Shares then being administered by the Trustee hereunder, and if none, then to
24 the Beneficiary's heirs at law under the intestacy laws of the State of Nevada.

25 6. Distributions to or for the Benefit of Minors or Persons Under
26 Disability. Whenever the Trustee is given the power or discretion to make
27 distributions to or for the benefit of a minor or other beneficiary under a
28 disability, the Trustee, in the Trustee's sole discretion, may make distributions
to a minor or other person under disability by making distributions to the
guardian or conservator of his or her estate and/or person, as the Trustee shall
determine, or to any suitable person with whom he or she resides, or the Trustee
may apply distributions directly for such beneficiary's benefit, or the Trustee
may make distributions to any duly established custodian for any minor
beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to
Minors Act of any State. Any custodian acting on behalf of a minor beneficiary
shall have the power to bind the beneficiary with respect to all matters
concerning the Trust. The Trustee, in its sole discretion, may also make
distributions directly to a minor if, in the Trustee's judgment, such minor is of
sufficient age and maturity to receive such distribution and spend the money
properly. The previous language of this paragraph 6 notwithstanding, if a
beneficiary is, or would be eligible for need-based government benefits, the
Trustee shall hold the funds for such beneficiary in a "special needs trust" as
that term is understood for need-based government planning. By "special needs

1 *trust" is meant that the Trustee shall have the sole and absolute discretion to*
2 *make distributions for the benefit of such beneficiary in a manner that improves*
3 *the qualify of life for the beneficiary but will not make the beneficiary ineligible*
4 *for need-based government benefits. The provisions of the Paragraph 6 are*
5 *intended to supplant need-based government benefits, but not to replace them*
6 *and all terms of this Paragraph 6 shall be so interpreted for all purposes.*

7 *H. Maximum Term for Trusts. Notwithstanding any other provision of this*
8 *Trust, unless terminated earlier under other provisions of this agreement, each*
9 *trust created under this agreement shall terminate upon the expiration of the*
10 *longest period that property may be held in trust under this agreement without*
11 *violating the applicable rule against perpetuities, or similar applicable rule. At*
12 *that time, the remaining trust property shall vest in and be distributed to the*
13 *persons entitled to receive distributions of income hereunder.*

14 34. Article Twelfth of the Trust states, in pertinent part, as follows:

15 Twelfth: Successor Trustee. In the event of the death or incapacity of
16 either Grantor, the Survivor shall continue to serve as the sole Trustee of all of
17 the trusts created hereunder. Upon the death or incapacity of the Survivor, the
18 Grantors then nominate and appoint [the Petitioner] as the Trustee of all of the
19 trusts created hereunder, or in the event that she is unable or unwilling to serve
20 in the said capacity, then the Grantors nominate and appoint the FIRST
21 NATIONAL BANK OF NEVADA to serve in the said capacity.

22 35. In 2008, the FIRST NATIONAL BANK OF NEVADA failed, and is no longer in existence.
23 As outlined in Article Twelfth, W. N. CONNELL and MARJORIE entrusted the beneficiaries (first being
24 MARJORIE and, upon MARJORIE's death, the Petitioner) of the Trust to act as Trustees.

25 36. The Petitioner requests that, due to the failure of the successor Trustee named by the
26 Grantors, this Court: (1) construe the Trust to provide that the intent of W. N. CONNELL and
27 MARJORIE is to appoint the beneficiaries of the Trust to serve as Trustees thereof; and (2) to reform the
28 Trust in accordance with such intention by modifying Article Twelfth as follows:

Twelfth: Successor Trustee. In the event of the death or incapacity of
either Grantor, the Survivor shall continue to serve as the sole Trustee of all of
the trusts created hereunder. Upon the death or incapacity of the Survivor, the
Grantors then nominate and appoint ELEANOR C. AHERN, f/k/a ELEANOR
MARGUERITE CONNELL HARTMAN, as the Trustee of all of the trusts
created hereunder, or in the event that she is unable or unwilling to serve in the
said capacity, then the Grantors nominate and appoint JACQUELINE M.

1 *MONTOYA to serve in the said capacity. In the event that JACQUELINE M.*
2 *MONTOYA is unable or unwilling to act as successor Trustee, then KATHRYN*
3 *A. BOUVIER shall act as successor Trustee. No successor Trustee shall have*
4 *any responsibility for the acts or omissions of any prior trustees and no duty to*
5 *audit or investigate the accounts or administration of any such trustee, nor,*
6 *unless in writing requested so to do by a person having a present or future*
7 *beneficial interest under a trust created hereunder, any duty to take action or*
8 *obtain redress for breach of trust.*

9 *In the event that none of the trustees named in this Article Twelfth are*
10 *able or willing to serve, then the majority of adult income beneficiaries of the*
11 *Trust shall select a successor Trustee.*

12 37. The reformation of the Trust, pursuant to this Petition, will not change the substantive rights
13 of the Petitioner during her lifetime. The sole purposes of the reformation are: (1) to clarify the
14 dispositive provisions of Trust No. 2 after the death of the Petitioner; and (2) to forestall the requirement
15 of petitioning the Court upon the death of the Petitioner to determine the successor Trustee.

16 38. The names, ages, residences, and relationships of the persons interested in the Trust, so far
17 as known to Petitioner, are as follows:

| <u>NAME</u> | <u>AGE</u> | <u>RELATIONSHIP</u> | <u>ADDRESS</u> |
|------------------------------------|------------|---------------------------------|--|
| ELEANOR C. AHERN | Adult | Residual Beneficiary | 6105 Elton Ave Las Vegas, NV 89107 |
| JACQUELINE M. MONTOYA | Adult | Daughter of ELEANOR C. AHERN | 3385 Maverick Street Las Vegas, NV 89108 |
| KATHRYN A. BOUVIER | Adult | Daughter of ELEANOR C. AHERN | 8461 Purple Sage Road Middleton, ID 83644 |
| SHRINERS HOSPITALS FOR CHILDREN | N/A | | Attn: Legal Department P.O. Box 31356 Tampa, FL 33631-3356 |

24 39. JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER have consented in writing
25 to the proposed reformation, as outlined in herein, and to this Court entering an order to assume
26 jurisdiction over the Trust, the appointment of the Petitioner as the Trustee, and the reformation of the
27 Trust as provided in this Petition. Said consents are attached hereto as Exhibits "6" and "7,"
28

1 respectively.

2 40. The interests of JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER and their
3 respective issue in Trust No. 2 are substantially identical, and JACQUELINE M. MONTOYA and
4 KATHRYN A. BOUVIER are able to adequately represent the interests of their respective issue,
5 including any minor and unborn issue without the necessity of the appointment of a guardian ad litem.
6 See, NRS 155.140 and 164.005.
7

8 **WHEREFORE**, Petitioner requests that this Petition be set for hearing, and that after hearing
9 the matters of this Petition, this Court find that notice of the time and place of such hearing has been
10 given in the manner required by law, and that this Court make and enter its Orders and Decrees pursuant
11 to NRS 153.031 (e) and (n), 164.010 and 164.015:
12

13 1. That this Court assume jurisdiction over THE W. N. CONNELL AND MARJORIE T.
14 CONNELL LIVING TRUST, dated May 18, 1972, and any and all sub-trusts created thereunder, as a
15 proceeding *in rem*;

16 2. That ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN be
17 confirmed as the Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST,
18 dated May 18, 1972, and any and all sub-trusts created thereunder, with the exception of any trust in
19 which the assets of Trust No. 3 of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING
20 TRUST, dated May 18, 1972 were appointed by MARJORIE T. CONNELL;
21

22 3. That this Court enter an order: (1) construing THE W. N. CONNELL AND MARJORIE T.
23 CONNELL LIVING TRUST, dated May 18, 1972, to provide that it was the intent of W. N. CONNELL
24 and MARJORIE T. CONNELL, as Grantors, to distribute the residue of Trust No. 2 created thereunder
25 to ELEANOR C. AHERN's heirs upon her death; and (2) that the Trust is to be reformed in accordance
26 with such intent;
27
28

1 4. That this Court order the Trust to be reformed to add new Sections "E," "F," "G," and "H"
2 to Article Fourth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated
3 May 18, 1972, as follows:

4 E. Distribution Upon Death of both the Survivor and the Residual
5 Beneficiary. Upon the death of both the Survivor and the Residual Beneficiary,
6 the Trustee shall divide the balance of Trust No. 2 into two equal shares, as
7 follows:

8 1. One (1) equal share shall be distributed, outright and free of
9 trust, to the Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if
10 she is then living. Subject to Section (F) below, if, as of the date of the Residual
11 Beneficiary's death, JACQUELINE M. MONTOYA is not then living, then said
12 equal share shall be distributed to JACQUELINE M. MONTOYA's then living
13 issue, by right of representation. Each share created pursuant to this Section
14 E(1) of Article Fourth for the benefit of the issue of JACQUELINE M.
15 MONTOYA shall be held as a separate trust ("Beneficiary's Share") for the
16 benefit of such issue ("Beneficiary") to be held by the Trustee, administered and
17 further distributed pursuant to Section G of this Article Fourth.

18 2. One (1) equal share shall be distributed, outright and free of
19 trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is
20 then living. Subject to Section (F) below, if, as of the date of the Residual
21 Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal
22 share shall be distributed to KATHRYN A. BOUVIER's then living issue, by
23 right of representation. Each share created pursuant to this Section E(2) of
24 Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be
25 held as a separate trust ("Beneficiary's Share") for the benefit of such issue
26 ("Beneficiary") to be held by the Trustee, administered and further distributed
27 pursuant to Section G of this Article Fourth.

28 3. In the event that both JACQUELINE M. MONTOYA and
KATHRYN A. BOUVIER predecease the Grantors, leaving no issue, and having
failed to exercise the testamentary power of appointment pursuant to Section (F)
below, then the balance shall be distributed in accordance with Article Eleventh
herein.

F. Power of Appointment. In the event that JACQUELINE M. MONTOYA
or KATHRYN A. BOUVIER predeceases the Residual Beneficiary, upon the
death of the Residual Beneficiary, the Trustee shall distribute such beneficiary's
equal share to or in trust for such one or more persons or organizations and in
such manner and proportions as such beneficiary may appoint by her will or
revocable trust making specific reference to this general power of appointment.

1 G. Management of Beneficiary's Shares. Until a Beneficiary has attained
2 the age of twenty-one (21) years, the Trustee may distribute to or apply for the
3 benefit of such Beneficiary so much of the income or principal from such
4 Beneficiary's Share as the Trustee determines, in the Trustee's sole discretion,
5 is necessary to provide for his or her health, education, maintenance, and
6 support. In addition, the Trustee may make the following discretionary
7 distributions:

8 1. Investment in Business. The Trustee may, in the Trustee's sole
9 discretion, apply the principal or income of such Beneficiary's Share for the
10 purpose of investing in a business or profession operated by, or to be operated
11 by, such Beneficiary and to be owned by the Beneficiary's Share.

12 2. Acquisition of Residences. The Trustee may, in the Trustee's sole
13 discretion, apply the income and principal of such Beneficiary's Share for the
14 purpose of purchasing one or more residences to be owned by the Beneficiary's
15 Share and used and occupied by such Beneficiary and his or her family,
16 including a primary residence, seasonal residence or otherwise. In the case of
17 any residence owned by the Beneficiary's Share, and in the Trustee's sole
18 discretion, such Beneficiary may occupy and use such residence without rent or
19 any other financial obligation for the payment of the taxes, insurance payments,
20 maintenance costs and other expenses required in order to keep such residences
21 in proper repair and free of liens.

22 3. Use of Tangible Trust Assets. The Trustee, in the Trustee's sole
23 discretion, may grant such Beneficiary the right to the use, possession and
24 enjoyment of all of the tangible personal property held by such Beneficiary's
25 Share, without financial obligation for the use of such property.

26 4. Distribution of Beneficiary's Share. Upon a Beneficiary attaining
27 the age of twenty-one (21), the Trustee shall distribute to him or her, outright
28 and free of trust, the remaining principal and accumulated income of that
Beneficiary's Share. If the Beneficiary has already reached the age of
twenty-one (21) at the time of the creation of the Beneficiary's Share, then the
Trustee shall, upon making the division, distribute, outright and free of trust, to
the Beneficiary the balance of such Beneficiary's Share.

5. Distribution Upon Death of Beneficiary. If any Beneficiary shall
die prior to the complete distribution of such Beneficiary's Share, then all of the
remaining assets in such Beneficiary's Share shall be distributed to or in trust
for such one or more persons or organizations and in such manner and
proportions as such Beneficiary may appoint by his or her will or revocable
trust making specific reference to this general power of appointment. To the
extent that the Beneficiary does not exercise this general power of appointment,
the remainder of such Beneficiary's Share shall be distributed to the issue of
such Beneficiary in equal shares by right of representation and each such share

1 shall be held, managed and further distributed by the Trustee as a Beneficiary's
2 Share under Section G of Article Fourth. If the Beneficiary shall die failing to
3 exercise this general power of appointment without leaving issue, then the
4 Beneficiary's Share shall be distributed pro rata to the other Beneficiary's
Shares then being administered by the Trustee hereunder, and if none, then to
the Beneficiary's heirs at law under the intestacy laws of the State of Nevada.

5 6. Distributions to or for the Benefit of Minors or Persons Under
6 Disability. Whenever the Trustee is given the power or discretion to make
7 distributions to or for the benefit of a minor or other beneficiary under a
8 disability, the Trustee, in the Trustee's sole discretion, may make distributions
9 to a minor or other person under disability by making distributions to the
10 guardian or conservator of his or her estate and/or person, as the Trustee shall
11 determine, or to any suitable person with whom he or she resides, or the Trustee
12 may apply distributions directly for such beneficiary's benefit, or the Trustee
13 may make distributions to any duly established custodian for any minor
14 beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to
15 Minors Act of any State. Any custodian acting on behalf of a minor beneficiary
16 shall have the power to bind the beneficiary with respect to all matters
17 concerning the Trust. The Trustee, in its sole discretion, may also make
18 distributions directly to a minor if, in the Trustee's judgment, such minor is of
19 sufficient age and maturity to receive such distribution and spend the money
20 properly. The previous language of this paragraph 6 notwithstanding, if a
beneficiary is, or would be eligible for need-based government benefits, the
Trustee shall hold the funds for such beneficiary in a "special needs trust" as
that term is understood for need-based government planning. By "special needs
trust" is meant that the Trustee shall have the sole and absolute discretion to
make distributions for the benefit of such beneficiary in a manner that improves
the quality of life for the beneficiary but will not make the beneficiary ineligible
for need-based government benefits. The provisions of the Paragraph 6 are
intended to supplant need-based government benefits, but not to replace them
and all terms of this Paragraph 6 shall be so interpreted for all purposes.

21 H. Maximum Term for Trusts. Notwithstanding any other provision of this
22 Trust, unless terminated earlier under other provisions of this agreement, each
23 trust created under this agreement shall terminate upon the expiration of the
24 longest period that property may be held in trust under this agreement without
violating the applicable rule against perpetuities, or similar applicable rule. At
that time, the remaining trust property shall vest in and be distributed to the
persons entitled to receive distributions of income hereunder.

25 5. That this Court enter an order: (1) construing THE W. N. CONNELL AND MARJORIE T.
26 CONNELL LIVING TRUST, dated May 18, 1972, to provide that the intent of W. N. CONNELL and
27 MARJORIE T. CONNELL was to appoint the beneficiaries of the Trust to serve as Trustees thereof; and
28

1 (2) that the Trust is to be reformed in accordance with such intent;

2 6. That this Court order the Trust to be reformed by modifying Article Twelfth of THE W. N.
3 CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, to read as follows:

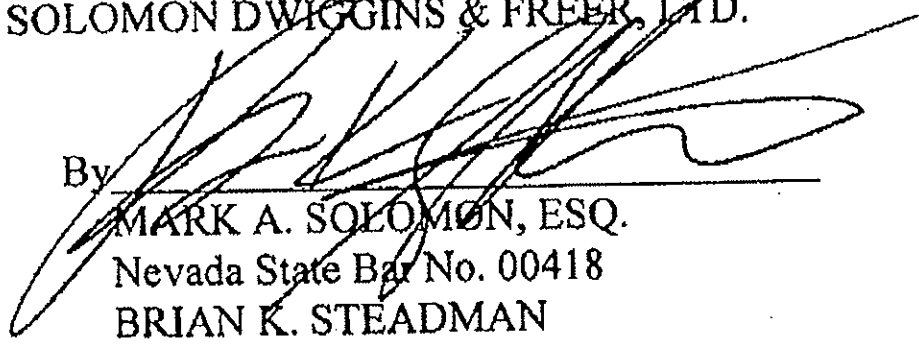
4 *Twelfth: Successor Trustee. In the event of the death or incapacity of*
5 *either Grantor, the Survivor shall continue to serve as the sole Trustee of all of*
6 *the trusts created hereunder. Upon the death or incapacity of the Survivor, the*
7 *Grantors then nominate and appoint ELEANOR C. AHERN, f/k/a ELEANOR*
8 *MARGUERITE CONNELL HARTMAN, as the Trustee of all of the trusts*
9 *created hereunder, or in the event that she is unable or unwilling to serve in the*
10 *said capacity, then the Grantors nominate and appoint JACQUELINE M.*
11 *MONTOYA to serve in the said capacity. In the event that JACQUELINE M.*
12 *MONTOYA is unable or unwilling to act as successor Trustee, then KATHRYN*
13 *A. BOUVIER shall act as successor Trustee. No successor Trustee shall have*
14 *any responsibility for the acts or omissions of any prior trustees and no duty to*
15 *audit or investigate the accounts or administration of any such trustee, nor,*
16 *unless in writing requested so to do by a person having a present or future*
17 *beneficial interest under a trust created hereunder, any duty to take action or*
18 *obtain redress for breach of trust.*

19 *In the event that none of the trustees named in this Article Twelfth are*
20 *able or willing to serve, then the majority of adult income beneficiaries of the*
21 *Trust shall select a successor Trustee.*

22 7. For such other and further relief as the Court deems proper.

23 DATED this 14 day of August, 2009.

24 Respectfully submitted,
25 SOLOMON DWIGGINS & FREER, LTD.

26 By 
27 MARK A. SOLOMON, ESQ.
28 Nevada State Bar No. 00418
BRIAN K. STEADMAN
Nevada State Bar No. 10771
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483

Attorneys for Eleanor C. Ahern, Petitioner

VERIFICATION

ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN, whose address is 6105 Elton Ave, Las Vegas, NV 89107, declares under penalties of perjury of the State of Nevada:

That she is the Petitioner who makes the foregoing Petition to Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust; that she has read said petition and know the contents thereof, and that the same is true of her own knowledge except for those matters stated on information and belief, and that as to such matters she believes it to be true.

DATED this 3rd day of August, 2009.



ELEANOR C. AHERN f/k/a ELEANOR MARGUERITE
CONNELL HARTMAN

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EXHIBIT G

Consent and Waiver of Notice of Jacqueline M. Montoya to Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust in the matter of the W. N. Connell And Marjorie T. Connell Living Trust dated May 18, 1972 in the District Court of Clark County, Nevada, Case No. P-09-066425-T

1 **CONS**
2 SOLOMON DWIGGINS & FREER, LTD.
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4 Nevada State Bar No. 00418
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12 Email: bsteadman@sdfnvlaw.com

13 Attorneys for Eleanor C. Ahern, Petitioner

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

| | | |
|-------------------------------------|---|------------------|
| 16 In the Matter of the |) | Case No. |
| 17 THE W. N. CONNELL AND MARJORIE |) | Department No. |
| 18 T. CONNELL LIVING TRUST, |) | |
| 19 Dated May 18, 1972 |) | |
| 20 An Intervivos Irrevocable Trust. |) | Date of Hearing: |
| |) | Time of Hearing: |

21 **CONSENT TO PETITION TO ASSUME JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND**
22 **CONSTRUE AND REFORM TRUST AND WAIVER OF NOTICE**

23 JACQUELINE M. MONTOYA, an interested party in the above-named Trust matter, states
24 as follows:

- 25 1. I am a contingent income beneficiary of the W. N. CONNELL AND MARJORIE T.
26 CONNELL LIVING TRUST, dated May 18, 1972 (the "Trust").
- 27 2. I have read the Petition to Assume Jurisdiction Over Trust; Confirm Trustee, and
28 Construe and Reform Trust (the "Petition") and believe it to be true and correct to the best of my
knowledge.
3. I hereby consent to the Petition and request that the Court enter an Order approving
the Petition in its entirety.
4. I hereby waive notice of notice of the hearing on the Petition pursuant to Nevada

1 Revise Statutes 155.010(4).

2 Dated this 8 day of August, 2009.

3

4


JACQUELINE M. MONTOYA

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